CASE AND COMMENT

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# The Ethics of Advocacy in an Unjust Cause.

BY EDWIN S. OAKES, B. A.

"But there is yet another exception against the Professors of our Law, namely, That wittingly and willingly they take upon themselves the defense of many bad causes, knowing the same to be unjust when they are first consulted with and retained. And this is objected to by such as presume to censure our Profession in this manner. In every Cause between party and party (say they) there is a right and there is a wrong; yet neither the one party nor the other did ever want a Counsellor to maintain his Cause."—*From the preface to the Reports of Sir John Davis, Chivalier, Attorney General of the King in Ireland (Folio), London, 1674.*

THE frequently uttered reproach, that the profession of the advocate is supported by the indiscriminate defense of right and wrong, is as old as the profession itself; and the worthy gentleman from whose defense of the lawyer who is so unfortunate as to have espoused the losing side the language which prefaces this article is taken is but one of a host who have rallied to refute an imputation which they have rightly felt to be undeserved. To undertake the discussion of a subject already so thoroughly discussed requires a plea in justification, which may be found in the currency of the attempts made in recent years through the discussion and adoption of codes of ethics, to crystallize the ethical consciousness of the bar into statements of basic principles of professional conduct.

It is not an overstatement to say that the typical lay view is that the lawyer is no more than a paid mercenary whose arms are at the service of whomsoever may choose to employ him, no matter how unrighteous the cause or how flagrant the guilt of the client. This view may justly be resented as both erroneous and undiscriminating,—erroneous, in that it fails to take into account the true function of the advocate in the administration of justice, and to apprehend the exact nature of the duties which he owes respectively to the court, to his client, and to society; undiscriminating, in that it condemns alike the fact of advocacy and the act in which such advocacy exceeds its proper bounds. At the same time it may be admitted that it is difficult for the average layman to conceive of the lawyer as being at the same time the minister of justice and the partisan of his client. It may even be difficult for the lawyer himself to grasp the true significance of his relation. It must, therefore, be our task to investigate the duties of such relation and to ascertain the bounds within which the lawyer may properly exert himself in advocating a cause in the righteousness of which he may not believe.

Allusion is made in the Pickwick Papers to an ingenious gentleman who by dint of "cramming" on China in the encyclopedia under the letter C, and on metaphysics under the letter M, combined the information thus obtained to evolve an article on Chinese Metaphysics. Legal ethics is not composed upon such a formula. It is not such an

agglomeration of high sounding phrases of "fidelity to a cause" and "loyalty to a client" as may salve the lawyer's conscience in doing "for a guinea," in Macauley's phrase, "with a wig on his head and a band around his neck . . . what without these appendages he would think it wicked and infamous to do for an empire."[1]

The lawyer's code of professional conduct is not *sui generis,* but is based upon sound morality. It is not an artificial system of rules inapplicable to laymen, but consists in the application to the profession's peculiar needs of the great principles which underlie the duty of man to himself and to mankind. It has been well and forcefully said: "There is no difference between personal and professional ethics. The foundations on which the distinction between right and wrong rest go deeper down than a man's occupation, and are unaffected by any such accident as the choice of his business or his methods. They are in the nature of things fixed and immovable. The lawyer who overlooks this important truth and assumes the existence of one code of morals for the man, and another and less exacting one for the practitioner will sooner or later find that his lower code has no absolute provisions, no fixed line, no distinct boundary between the permitted and the forbidden, for when once the known limits of the higher code have been passed, the questions 'How far to go? When and where to stop?' are to be determined, not by our conscience or our moral instincts, for these have already been disregarded, but by an intellectual calculation of the necessities of the situation, and of the risks of exposure, loss of professional standing, or punishment."[2] To this may be added another author's pithy statement: "The advocate does not cease to be a human being with all his ethical and religious obligations, a citizen with all his political obligations to his country and her laws, and a gentleman with all the obligations of honor and civil intercourse. He is no morally privileged person, as no man can be."[3]

What then, in the light of these general principles, should be the action of an advocate whose services are sought in a case which he believes to be unjust? In pursuing this inquiry in detail, let us separately consider civil and criminal cases.

In the first place it may be conceded that the lawyer is not bound to accept a retainer in any case which is distasteful to him; and a fastidious sense of honor may lead him to reject employment which according to established standards he might accept without impropriety. The story is told of a one-time member of the bar of western New York, a judge of the supreme court, famous in his day for his pungent manner of expression, that he was at one time sought by a client whose legal right was as clear as his moral claim was doubtful. Much to his surprise, the judge declined the case. The client was attempting to expostulate with him when the judge effectually silenced him with the statement, uttered with the greatest deliberation, and with the judge's own inimitable twang: "Mr. ——, I have made up my mind that you are a damn——mean——man, and I don't want to have anything to do with you." Horace Binney wrote in his private record: "I never prosecuted a cause that I thought a dishonest one, and I have washed my hands of more than one that I discovered to be such after I had undertaken it, as well as declined many which I perceived to be so when first presented to me."[4]

But though a lawyer may with propriety decline, may he with equal propriety undertake the conduct of a doubtful case?

The devoted and indefatigable Boswell, presenting one of his numerous sight drafts upon the wisdom of his patron, once asked Dr. Johnson:[5] "But what do you think of supporting a cause which you know to be bad?" To which the doctor replied, "Sir, you do not know it to be good or bad till the judge determines it. * * * An argument which does not convince yourself may convince

[1] Essay on Bacon.
[2] Williams, Legal Ethics.
[3] Lieber, Political Ethics.
[4] Sketch of Horace Binney, by Charles Chauncey Binney.
[5] Boswell, Life of Johnson.

the judge to whom you urge it; and if it does convince him, why then, Sir, you are wrong and he is right. It is his business to judge, and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion." [6]

This contains much of truth, but does it contain the whole truth? Can a lawyer plead at the bar of conscience that it was not his business to sit in judgment? Is it his duty to institute an independent investigation into the merits of a case? Here even the highest minded differ: and the fact of such difference shows the question to be one of taste rather than of principle.

"It was the habit of George Wythe," says Mr. L. G. Tyler, "in case he entertained any doubts of the truth of his client's statements, to require of him an oath, and if any stage of the case he found that deception had been practiced upon him, the fee was returned and the case abandoned."

On the other hand, Dr. Showell Rogers, in an article in the Law Quarterly Review, argues that facts may not only differently impress different minds, but operate upon the same mind differently according as they are or are not fully threshed out; that it is impossible for an advocate to determine in advance that his client is right; that the result of such a practice would be that all the worst cases would ultimately find their way into the hands of the unscrupulous, to the detriment of the interests of public justice; and that such course would make the lawyer's character a part of his client's case. In this connection he quotes from a private letter written by Lord Halsbury as follows: "A thesis has been propounded on the other side more extravagant, and certainly more impossible of fulfilment; that is, that an advocate is bound to convince himself, by something like an original investigation, that his client is in the right before he undertakes the duty of acting for him. I think such a contention ridiculous, impossible of performance, and calculated to lead to great injustice. If an advocate were to reject a story because it seemed improbable to him, he would be usurping the office of the judge, by which I mean the judicial function, whether that function is performed by a single man, or by the composite arrangement of judge and jury which finds favour with us. Very little experience of courts of justice would convince any one that improbable stories are very often true notwithstanding their improbability." [7]

Much of the literature of legal ethics is concerned with the propriety of a lawyer's undertaking the defense of one whom he believes to be guilty of crime. Here, though the ethical aspect is more clearly outlined, the same considerations apply as in civil cases.

Although a lawyer may properly decline such employment, circumstances

[6] The same idea is expressed by Baron Bramwell in Johnson v. Emerson (1871) L. R. 6 Exch. 367: "A man's rights are to be determined by the court, not by his attorney or counsel. It is for want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. The client is entitled to say to his counsel, I want your advocacy, not your judgment: I prefer that of the court."

The quaintness of the language used by Sir John Davis in putting forth a somewhat similar argument warrants its reproduction in this connection: "For when doth the right or wrong in every Cause appear? when is that distinguished and made manifest? Can it be discovered upon the first commencement of the Suit, and before it can be known what can be alleged and proved by either party? Assuredly it cannot. And therefore the Counsellor, when he is first retained cannot possibly judge of the Cause, whether it be just or unjust, because he hears only one part of the matter; and that also he receives by information from his Client, who doth ever put the Case with the best advantage for himself. But when the parties have pleaded and are at Issue, when they have examined witnesses in course of equity, and he descended to a Trial, in course of Law, after publication and hearing in the one case, and full evidence delivered in the other; then the learned Counsel on either side may perhaps discern the right from the wrong, and not before. But then are the Causes come to their catastrophe, and the Counsellors act their last part. And yet until then the true state of the Cause on both sides could not possibly be discovered."

[7] The Ethics of Advocacy, Law Quarterly Review for July, 1899.

may be such as to impose upon him an obligation to undertake the case. Such was the obligation felt by William H. Seward, who, because he believed the prisoner to be insane, volunteered, in the face of strong popular feeling, to defend a friendless negro, indubitably demonstrated to have committed an atrocious murder. In his address to the jury, he thus expressed the sense of duty by which he was actuated: "I am not the prisoner's lawyer. I am, indeed, a volunteer in his behalf, but society and mankind have the deepest interests at stake. I am the lawyer for society, for mankind, shocked, beyond the power of expression, at the scene I have witnessed here of trying a maniac as a malefactor." [8]

The right of an advocate to defend a person accused of crime does not depend upon the guilt or innocence of the accused, but upon his right to be defended. [9] Says Judge Sharswood: "Every man accused of an offense has a constitutional right to a trial according to law; even if guilty he ought not to be convicted and undergo punishment unless upon legal evidence; and with all the forms which have been devised for the security of life and liberty. These are the panoply of innocence, when unjustly arraigned, and guilt cannot be deprived of it without removing it from innocence. He is entitled, therefore, to the benefit of counsel to conduct his defense, to cross-examine the witnesses for the State, to scan, with legal knowledge, the forms of the proceeding against him, to present his defense in an intelligible shape, to suggest all those reasonable doubts which may arise from the evidence as to his guilt, and to see that if he is convicted it is according to law." [10]

The consensus of opinion as to this phase of the lawyer's ethical obligations is expressed in the code of ethics adopt-

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[8] William H. Seward, in defense of Freeman.

[9] It is interesting to note that in England, until the enactment of Stat. 6 & 7 William IV. chap. 114, the right of a person accused of felony to the assistance of counsel was formerly greatly restricted.

Says Blackstone: "It is a settled rule at common law that no counsel shall be allowed a prisoner upon his trial upon the general issue in any capital crime, unless some point of law shall arise proper to be debated. A rule which (however it may be palliated under cover of that noble declaration of the law, when rightly understood, that the judge shall be counsel for the prisoner; that is, shall see that the proceedings against him are legal and strictly regular) seems to be not at all of a piece with the rest of the humane treatment of prisoners by the English law. For upon what face of reason can that assistance be denied to save the life of a man which yet is allowed him in prosecutions for every petty trespass? Nor indeed is it, strictly speaking, a part of our ancient law; for the Mirror, having observed the necessity of counsel in civil suits, 'who know how to forward and defend the cause, by the rules of law and customs of the realm,' immediately afterwards subjoins, 'and more necessary are they for defence upon indictments and appeals of felony than upon other venial causes.' And the judges themselves are so sensible of this defect that they never scruple to allow a prisoner counsel to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact; for as to matters of law arising on the trial, they are *entitled* to the assistance of counsel." 4 Bl. Com. 355.

The practice, however is defended by Sir John Davis on ethical grounds in the following passage, the fallacy of which, of course, lies in the assumption that an accusation necessarily imports guilt: "And as our Judges do discountenance bad Counsellors, so doth our Law abhor the defense and maintenance of bad Causes, more than any other Law in the world besides. For by what other Law is Unlawful maintenance, Champertie, or Buying of titles, so severely punished? By what other law doth the Plaintiff *pro falso clamore,* or unjust *vexation,* or the Defendant for pleading a False Plea, pay an amerciament or fine to the publick Justice? And this is one cause, among others, why our Law doth not allow counsel unto such as are indicted of Treason, Murther, Rape, or other capital crimes. So as never any Professor of the Law of England hath been known to defend (for the matter of fact) any Traitour, Murtherer, Ravisher, or Thief, being indicted and prosecuted at the Suit of the King. *Turpe reos empta miseros defendere lingua,* saith the Poet. And therefore it is an honour unto our Law, that it doth not suffer the Professors thereof to dishonour themselves (as the Advocates and Orators in other countries do) by defending such Offendours. For example whereof we have extant divers Orations of Cicero, one pro C. Raberio perduellionis reo; another pro Roscio Amerino, who was accused of Parricide; and another pro Milone, who was accused of Murther."

[10] Sharswood, Legal Ethics.

ed by the American Bar Association as follows: "It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense." [11]

But, so far as our present topic is concerned, all this is beside the mark. Even after admitting the danger of passing judgment in advance, and giving due recognition to the fact that confessions of guilt have been known to prove unreliable, the fact remains that not every case is, or may properly be regarded as, a doubtful one: and to pretend that the advocate may always justify himself on this ground is but a shallow sophistry that deceives nobody. The case may be so clear and the facts so little in doubt as to produce a moral conviction of the injustice of the cause, or of the guilt of the client. Here is the crux of the whole matter; and to solve the difficulty we must proceed to consider the true function of the advocate.

To say that the advocate acts solely as the mouthpiece of his client, and so may speak for the unjust as well as for the just, for the guilty as well as for the innocent, without any violation of ethical obligations, is to attempt his justification upon a ground that cannot be wholly satisfactory.

Let us instead take the higher ground that his true function is to promote the administration of justice, and consider whether the advocacy of an unjust cause is inconsistent with that function. Now, human justice cannot undertake to deal with each and every man according to his just deserts. Its domain must ever be narrowed by human fallibility. Since the men concerned in its administration can be neither all-wise nor all-good, experience has demonstrated the wisdom of proceedings according to established rules, that justice may be done in the mass though it may fail of being done in the particular. This being so, the interests of society demand that the litigant be permitted to urge his claim, whatever its ethical aspect may be, or to set up his defense, no matter how unconscionable, or to demand that his guilt be established according to the forms of law, in order that in the ninety and nine cases the right may prevail and the innocent be exonerated, even though in the hundredth case the just cause may suffer defeat, and the guilty escape punishment. And so when the individual case is viewed, not by itself, but in the larger aspect, it will be perceived that the advocate is promoting the administration of justice by contending for the legal rights of his client, whatever may be his private opinion as to such client's deserts. Said Sidney Smith, in an assize sermon preached before Mr. Justice Bayley and Baron Hullock: "Justice is found, experimentally, to be most effectually promoted by opposed efforts of practiced and ingenious men presenting to the selection of an impartial judge the best arguments for the establishment or explanation of the truth. It becomes then, under such an arrangement, the decided duty of an advocate to use all the arguments in his power to defend the cause he has adopted, and to leave the effects of these arguments to the judgment of others."

The lawyer's function being ascertained, the question next arises, What is to be the manner of its exercise? Having accepted a retainer in a presumably unjust cause, what are the ethical obligations of the lawyer with respect to the conduct of the case?

In a civil case, his professional duty requires him to secure for his client every advantage which the law permits. [12] It is not his business as an ad-

[11] According to a press report, the code of legal ethics submitted to the New York County Lawyer's Association forbids a lawyer to accept as a client a man whom he knows to be guilty. Certainly if a lawyer has actual knowledge of as distinguished from mere belief in, a man's guilt, as where he was an eyewitness of the crime, in that case he must be a witness, and so is disqualified from acting as counsel; but if such provision is intended to inhibit the acceptance of a retainer because of mere belief in the guilt of the accused, it is indeed, as the report characterizes it, a novelty in the history of lawyer's ethics.

[12] Baron Puffendorf expresses the opinion that in civil cases "it doth not appear that the Advocate can with a safe Conscience hinder the injured Party from obtaining

vocate to correct the law, but to obtain its enforcement for his client's benefit. He may properly advise him of his right to plead such defenses as infancy, usury, or the statute of limitations. He is bound to require his adversary to demonstrate his title to the remedy sought, irrespective of the merits of the case. As Dr. Showell Rogers says in the article to which reference has before been made,[7] if legal rights are to be respected at all, it would be difficult and dangerous to allow any vague or general considerations of expediency or even of justice, real or supposed, to prevail over them.

At the same time, where the equities are manifestly against his client it is clearly the lawyer's duty, albeit its performance may require some courage, to declare his own view of the client's moral duty and to urge him to submit to a settlement of the case.[13]

But it is in the conduct of criminal cases that the advocate is more likely to be perplexed by apparently conflicting obligations. Is he, he may ask himself, in exerting himself to procure his client's acquittal playing the nurse to villany? Does he justly lay himself open to the charge of being an accessory after the fact? To which we may answer in the light of what has hereinbefore been said, No, if his advocacy is exercised within its proper bounds.

There is a famous passage in the speech of Lord Brougham in defense of Queen Caroline upon her trial in the House of Lords, in which he said: "An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office but one person in the world, THAT CLIENT AND NONE OTHER. To save that client by all expedient means —to protect that client at all hazards and costs to all others, and amongst others to himself—is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his client's protection." But having regard to its context and the circumstances under which it was uttered, there can be no doubt that this passage was never intended as a deliberate definition of the duty of an advocate; and Lord Brougham himself has explained that it was simply intended as a menace, that if the bill was pressed beyond a certain point he would not only set up a recriminatory case against the King, but would also impeach the King's own title by proving that he had forfeited the Crown by his marriage to a Roman Catholic (Mrs. Fitzherbert) while heir apparent. However, as Coleridge in commenting on the passage remarks: "It exactly suited the caliber of those who were to profit by it, and it has stuck like a burr to the profession ever since."

But others have expressed broader and higher conceptions of the duties of an advocate. Lord Brougham having used somewhat similar language at a dinner given to the great French advocate, Berryer, in 1864, the then Lord Chief Justice of England, Sir Alexander Cockburn, in responding to the toast of "The

his rights as soon as possibly he may. And therefore in such Controversies, we condemn as unlawful, not only false Allegations and feigned Reasons, but likewise all dilatory Exceptions and Demurs; in as much as all there are a Let and Hindrance to the one Party from paying what he owes; and to the other from receiving what is due to him."—Law of Nature, bk. 4, chap. 1.

[13] If a lawyer, says Sir John Davis, "fortune to be ingaged in a Cause, which, seeming honest in the beginning, doth in the proceeding appear to be unjust, he followeth a good counsel of the School-man, Thomas Aquinas: "Advocatus si in principio credidit causam justum esse, quae postea in processu apparet esse injusta, non debet eam prodere, ut scilicet alteram partem juvet revelando causae suae secreta: potest tamen, et debet, causam deferere, vel eum cujus causam agit inducere ad cedendum, sive ad componendum, sine adversarii damno."—Thom. Aquinas, 2. 2. Quaest, 71, art., 3.

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# Can The Lawyer Advertise?

BY L. B. ELLIOTT

of the Elliott Advertising Agency, Rochester, N. Y.

The Author

NOTE—We are fortunate in being able to present to our readers, upon the question of Advertising by Lawyers, the views of a professional advertising man. Mr. Elliott is a well known writer and lecturer upon "The Art of Advertising."—Ed.

WHEN the editor of CASE AND COMMENT requested me to tell the readers of this magazine how the lawyer can advertise, he handed me a formidable looking package of abstracts bearing on the case, with the suggestion that the material contained therein might give direction to my thoughts on the subject. A careful examination of these notes would seem to show that if a lawyer is to be considered a respectable member of his profession, he must studiously avoid all attempts to bring business to him, and must be content to sit down in his office patiently waiting for something to turn up. The basis of this code of "ethics" appears to me to be the assumption that, should the legal profession permit itself to advertise, such advertisements would tend to stimulate the laity to bring actions at law not justified, and which would not otherwise be brought. Without desiring to enter into the discussion of so time-honored a principle, it would appear to an ordinary individual that, should such unjust actions *be* stimulated by legal advertising, it is still within the province of the practitioner *to decline to accept* as his clients those who wish to bring such unjustified actions. Notwithstanding the fact that lawyers are not permitted to advertise, every lawyer does advertise himself and his business, favorably or unfavorably every day he lives. Every act of a business man or of a professional man advertises his business in some way. The public gains an impression from everything that exists or is done by or in connection with a man and his business, and such impressions have a determining effect when business is to be placed.

Every man is obliged to live and perform certain functions, and whether these acts make for his success as a business man depends almost entirely upon his mental attitude toward those acts and their effect upon his business. If a man assumes the attitude that advertising is not for him, that it is undignified, that it has no value for him as a lawyer, that it is not worth considering, he will surely miss the majority of the opportunities that naturally present themselves and that might be made to present themselves to create that favorable impression upon the public mind which would tend to the growth of his prestige and the increase of his clientage. If, on the other hand, the lawyer says to himself, "Advertising is necessary, desirable, legitimate, dignified, and profitable, and every effort should be made to advertise and to create a favorable impression upon the public," an endless chain of opportunities will develop whereby this end can be attained.

In what I am about to say I wish to be understood as thoroughly in sympathy with the dignified spirit in which the high class attorney conducts his business, and that I am not an advocate of any method that might be called questionable, undignified, or in any way calculated to lower the standard of the legal profession in the public mind. I do, however, believe, that there are many ways open to

the lawyer, by which he can extend his acquaintance among the people, make them acquainted with his ability as a lawyer, and with the results which he attains in the work entrusted to him, and I thoroughly believe that these methods should be employed, because, if a man is engaged in business or in a profession, he is in duty bound to make the most of his opportunities, and to become as successful as his ability and his environment will permit. Otherwise he is not doing full justice to the gifts that have been given him and to the opportunities that are placed within his grasp.

Perhaps the greatest factor in the success of the professional man is personality. Every man has, as the gift of nature, a certain personality which may be likened to a diamond in the rough. A rough diamond is more or less attractive and desirable according to the condition in which nature has left it, but when worked upon and skilfully fashioned, the roughest diamond can be made far more attractive, valuable, and desirable. Thus every man can increase the value of his own personality by cultivating it, and in order to cultivate personality successfully it is necessary to follow a definite plan. I have observed that many lawyers seem to have little regard for this great factor in their business success. It is within the power of every man to be neat in his personal appearance and cleanly in his habits. There are few men who can not cultivate an agreeable presence. There is perhaps no profession in which the element of confidence is a greater element for success than in the legal profession. Careful study and constant practice will enable almost any man if he wills to do it, to attain a method of procedure and a system of dealing with his clients that will inspire confidence. Carelessness and apparent indifference to the statements and wishes of the clients are, in my opinion, the greatest destroyers of confidence, and should be carefully avoided.

The location and furnishing of the business office offer exceptional opportunities for advertising. It is but natural for business to go to the man who is located where many people come and go. Such locations are apt to be more expensive, but it would not be possible for the landlord to receive greater rents for space in such locations if they were not worth more. The very fact of a lawyer's office being located in a prosperous business district in a building well-cared for, is in itself a recommendation for his enterprising character and business judgment. A well-furnished, clean, light, and orderly kept lawyer's office is another splendid recommendation, and invites the confidence, respect, and patronage of all who may enter it, and is good advertising.

The employees of the lawyer add materially to his success if they are presentable in appearance, intelligent, and trained to receive the public courteously, promptly, and with an appearance of interest in the requirements of the prospective client.

It is needless to say that prompt and efficient service, combined with careful and able attention to every detail of the business placed in the lawyer's hands, is perhaps the greatest advertisement that he can have and the one on which he now depends for his advertising. Many lawyers, I believe, do not realize the great importance of prompt service in legal matters. Human nature is much the same everywhere, and it is a fact that commercial houses who give prompt service are forgiven many other shortcomings, whereas those that may give better value with dilatory service do not find favor with the public. The man who appreciates prompt service from the butcher or baker is equally appreciative and insistent upon prompt service in legal matters, and, when he does not get it, becomes restive, and is apt to look about for others to serve him. No amount of ability or individual brilliancy can entirely overcome the lack of businesslike methods in dealing with the public, and whereas many brilliant men are successful notwithstanding slothful and unbusinesslike methods, how much more successful would they be were they alive to the great value to them of promptness, cheerfulness, courtesy, and directness in all matters wherein they come in contact with the public.

The social activities of every man re-

flect on his business, and this is especially true in the case of the professional man, for it is by this means that he is able to extend his acquaintanceship and to make more and more people acquainted with his personality, and thus draw them to him, if his personality is of a likeable character.

The attitude of the lawyer toward philanthropic movements and all matters connected with the civic and political life of the community, are in the end good or bad advertising for him, whether he will or no, according to the advantage he takes of these opportunities.

I may be trespassing upon questioned ground when suggesting the desirability of cultivating the acquaintance of representatives of the press. These gentlemen can do a great deal toward spreading the knowledge of results obtained by the lawyer in his practice, without solicitation on his part, or any effort to secure "puffs" or "write-ups." There is a news story in almost every action at law, and the more important the interests involved, the greater the news value of the story. A personal acquaintance, and glad hand extended to the representatives of the press, result in keeping the name of the practitioner favorably before the public entirely without expense to him, and without violating any of the tenets of the legal code of ethics.

Membership in various clubs, secret orders, benevolent, civic, and religious organizations keeps the name of the lawyer in good company continually, and, in addition to his personal contact with the members of these societies, places his name before a large number who might otherwise not know of him.

In conclusion I wish to enter an argument in favor of the desirability of out and out publicity for the legal profession as a whole. The original idea of advertising on which the traditions of the lawyer are founded picture it as the tool of the charlatan and fakir. The first advertising *was* employed by medical quacks and promoters of shady schemes, the circus man and other imposters. The progress of business has practically eliminated this element from advertising, and to-day the great bulk of the hundreds of millions of dollars spent for advertising is provided by the most solid, most conservative businesses of our country. Advertisements to-day, broadly speaking, are just as truthful, just as dignified, and just as respectable as any other part of the magazines and newspapers in which they are printed, and in many cases even more so. The highest paid writers, artists, and critics are employed in the production of this advertising matter. Its object is to give the public *reliable information* regarding the products of the manufacturer, wares of the dealer, or the sevices of a coporation, individual, or professional man. Surely the *statement of fact* cannot be undignified or lower the tone of any business or profession. It seems to me that the various bar associations ought to take such action as would permit the lawyer to announce his business in the public prints, and to state what particular lines of business he is prepared to handle. The public would find it a great convenience to know whether a lawyer is a general practitioner, a criminal specialist, a patent attorney, or a corporation adviser. In the regular course of my business I have frequently been asked by my own clients, "Where can I find a patent attorney?" "Where can I find an attorney who is specially posted in the drawing of contracts?" "Where can I find an attorney whose opinion I can rely upon to interpret a contract presented to me for my signature?" "Where can I find an attorney who can advise me regarding the best methods of increasing my bank discounts and maintaining my credit?" Obviously, lawyers who specialize in these things would gain by the mere statement of the fact that they do specialize in them, without the necessity of claiming exaggerated powers in producing results or making comparisons between themselves and other attorneys.

It would seem to me that there is no more reason why an attorney should not advertise in the newspapers or other public prints, in a dignified and truthful manner, than there is reason why a banking institution, an artist and advertising writer, an architect, a consulting engineer, a chemist, assayer, or other techni-

cal or professional man who has only his service to give in return for money, should advertise. All of these do advertise, and it is considered ethical and good business to do so.

Finally let me call your attention to the fact that the quack lawyer as well as the quack doctor *do advertise,* and if there is a lowering of dignity and prestige of the legal and medical profession through advertising, it is due to the fact that the respectable practitioner *refrains from advertising* and gives over the education of the public through advertising entirely to the quack.

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# Two Lawyers

By James J. Montague

Erasmus Green knew lots of law; he reeked with erudition;
For years he'd poured o'er sheepskin tomes without an intermission.
He knew what Judson, J., had said in Ninth N. J. reports,
And he could reel decisions off from all the higher courts.
But, as he never blew or bragged, nobody ever guessed
That of a thousand legal minds E. Green's was much the best.
He lived and toiled in poverty; he never drew a brief,
And when he died no courts adjourned in token of their grief.

His brother John knew little law, but when a case he tried,
He threatened, blustered, sawed the air, exulted and defied.
And wise men smiled when they passed by, or looked extremely pained;
And judges fined him for contempt and called him addle-brained.
But there were always quite a few who very much admired him,
And when they got mixed up in law they quickly went and hired him.
And thus his business daily grew; for those who placed reliance
Upon his skill, though ignorant, were all good-paying clients.

Now, when his cases multiplied the wise ones said: "We guess
There must be some good reasons for this person's great success.
His fame is growing rapidly—he has a lot to do—
And therefore we will let him have our legal business, too."
And so, though Green knew more about draw-poker than the law,
He built the greatest clientele the country ever saw.
*It may be that Erasmus Green was really great and wise,*
*But there is this much to be said: It pays to advertise!*

—New York Evening Journal.

# Dealing with Client's Money

BY RAY L. SWIFT

THE importance to a lawyer of the adoption of correct methods, and the formation and strict following of correct and safe habits of dealing with money coming into his hands, belonging to his clients, cannot be overestimated. Failure or laxity in this regard is liable to result in financial loss, in the loss of the confidence of his clients, or other members of his community who might otherwise become his clients, in possible prosecution and conviction for embezzlement or larceny, or, what is most serious of all, in his professional execution through proceedings for disbarment.

The retention by an attorney, of money belonging to his client, after demand therefor, or the fraudulent appropriation thereof to his own use, is universally regarded by the courts as sufficient ground for his disbarment.[1] Nor is payment by the attorney after commencement of disbarment proceedings, of itself sufficient defense to the action, though it may in some cases be considered in mitigation of punishment.[2] What is still more important, he may be disbarred though he used the money without actual intent to defraud his client, but in the hope of being able to pay it when demand should be made.[3] And the fact that he has become unable to pay over the amount which he appropriated, because of the unexpected depreciation of securities deposited in a bank as collateral, is immaterial in an action for disbarment for the failure to promptly pay over the money belonging to a client.[4]

In addition to disbarment, an attorney may be convicted of embezzlement or larceny, if he appropriates to his own use money belonging to his client, with intent to deprive the owner thereof,[5] or without informing his client of its collection,[6] or if he puts his client off with unfounded excuses.[7] And he may be so convicted though the money remains in the bank in which he originally deposited it,[8] though he acknowledges receipt of the money,[9] or though he intended to replace it.[10] And the demand by the client for payment is not a prerequisite to a conviction for larceny.[11]

However, if an attorney withholds or uses his client's money without a wrongful intent,—as, where he holds the money as a fund upon which he claims to have a lien for services,[12] or believes, though mistakenly, that his client consented to his use of the money as a loan upon interest,[13]—he should be acquitted. This, it will be observed, is vastly different from the case of an attorney who misappropriates his client's money wrongfully, without any claim of right except the hope that he will be able to replace it before detection, which is the stock excuse, and probably, in the beginning, the actual belief of most embezzlers.

From the standpoint of civil liability, the failure of an attorney to promptly

[1] 19 L.R.A.(N.S.) 414, note.
[2] Ibid.
[3] Re Rockmore, 130 App. Div. 586, 117 N. Y. Supp. 512.
[4] People ex rel. Healy v. Pattison, 241 Ill. 89, 89 N. E. 254.
[5] People v. Converse, 74 Mich. 478, 16 Am. St. Rep. 648, 42 N. W. 70.
[6] People v. Treadwell, 69 Cal. 226, 10 Pac. 502, 7 Am. Crim. Rep. 152.
[7] George v. People, 167 Ill. 447, 47 N. E. 741.
[8] People v. Birnbaum, 114 App. Div. 480, 100 N. Y. Supp. 160.
[9] State v. Belden, 35 La. Ann. 823.
[10] Farmer v. State (Tex. Crim. Rep.) 34 S. W. 620.
[11] People v. Fitz-Gerald, 130 App. Div. 124, 114 N. Y. Supp. 476, affirmed in 195 N. Y. 153, 88 N. E. 27.
[12] State v. Temple, 63 N. J. L. 375, 43 Atl. 697.
[13] State v. Smith, 47 La. Ann. 432, 16 So. 938.

pay over money due his client is a breach of implied contract, making him liable to an action in assumpsit,[14] or, if he converts the money to his own use, to an action in trover or case.[15] Or he may be compelled by a bill in equity to account for money collected.[16]

While an attorney may be charged with interest on money he fails to pay over to the client, the cases fix different periods for which it is to be computed, such as from the time of demand or wrongful conversion,[17] from the time it was actually collected,[18] or for the time he used it.[19] And though the statute of limitations will operate for the benefit of an attorney, the authorities are not agreed as to when it will begin to run, some holding that it runs from the time of demand, others from the time of collection, while still others hold that it runs from the time the client has notice of collection from the attorney, or other means of knowledge on his part that the money has been collected.[20]

In the Code of Ethics adopted by the American Bar Association in 1909, this phase of a lawyer's duty to his client is stated in article 11, as follows: "Money of the client, or other trust property coming into the possession of the lawyer, should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with his private property or be used by him." This brief but admirable statement, which is now in force in over one third of the states, would seem to afford a safe guide for the attorney in dealing with money belonging to his client, and strict adherence thereto will keep him free from the imputation of moral or professional dishonesty in this regard, though it will not necessarily insure him against financial loss in being obliged to replace money lost through the fault of others. To insure himself against the latter he should take the precautions required of any trustee.

A reference to the article of the Code of Ethics quoted above will show that two distinct rules are there set forth to guide the conduct of the attorney. The first is to report promptly to the client the receipt of money. In addition to the ethical and professional duty involved, it is also the legal duty of an attorney to give notice of collection to his client immediately,[21] or at least within a reasonable time.[22]

In addition to the moral and legal duty of the attorney to promptly report the collection of money, a little reflection will show that the constant following of the practice will operate as a powerful restraint to the temptation so often felt by young lawyers who are necessarily living on the ragged edge of their resources most of the time, or of others who are living unnecessarily to the limit of their incomes, to use money coming into their hands to tide them over some temporary financial stringency which is no doubt frequently the beginning of a course of conduct which leads to serious results for the attorney. He is not as apt to "borrow" money in this way if he knows it is likely to be demanded at any time; and if the client is informed of the collection the temptation to misrepresent the fact because of some contingency arising thereafter is effectively removed.

The other duty set forth in the article quoted from the Code of Ethics is the attorney's obligation to refrain from commingling the client's money with his own, or from using it for his own purposes without the client's consent.

Aside from the fact that the temptation to use money belonging to the client is much greater if it is commingled with the attorney's private fund, either in his pocket, his safe, or his bank account, the attorney who does so is also subject

[14] Goodyear Metallic Rubber Co. v. Baker, 81 Vt. 39, 69 Atl. 160, 15 A. & E. Ann. Cas. 1207, 17 L.R.A.(NS) 667.

[15] Jackson v. Moore, 94 App. Div. 504, 87 N. Y. Supp. 1101; Cotton v. Sharpstein, 14 Wis. 226, 80 Am. Dec. 774; Pratt v. Brewster, 52 Conn. 65.

[16] Scott v. Wickliffe, 1 B. Mon. 353; Singer, N. & Co. v. Steele, 24 Ill. App. 58; Kelley v. Repetto, 62 N. J. Eq. 246, 49 Atl. 429.

[17] Walpole v. Bishop, 31 Ind. 156, Dwight v. Simon, 4 La. Ann. 490.

[18] Harkavy v. Zisman, 96 N. Y. Supp. 214.

[19] Mansfield v. Wilkerson, 26 Iowa, 482.

[20] 17 L.R.A.(N.S.) 667, note.

[21] Voss v. Bachop, 5 Kan. 59.

[22] Spencer v. Smith (Ind. App.) 87 N. E. 154.

to the danger of using it by mistake or oversight or, if on deposit, of its being attached by a personal creditor, so that he may have some difficulty in producing it upon demand.

Judge Simeon E. Baldwin seems to think that article 11 of the Code states the duty of an attorney in this respect too strictly, for he says: "The Code occasionally contains general expressions which in practice must be taken with certain implications or limitations."

"Thus, it is stated that money of the client coming into the possession of the lawyer should not be commingled with his private property or be used by him. This can hardly be meant to treat it as a breach of ethical obligation for an attorney of ample means, who receives a bank check in payment of a claim left with him for collection, to deposit it to his own credit in his own bank account, in order conveniently to deduct his own fees, remitting the balance promptly by his own check to the client. It would seem *in foro conscientiæ* (whatever might be the lawyer's liability, should the bank fail) that the client's consent to such a transaction would be fairly implied, even if there had been no previous dealings between them of a like nature. So the young lawyer who receives a five dollar bank note to apply on a claim for a hundred dollars can hardly be regarded as in the wrong, if he puts it for safe keeping in his own pocket-book, provided it be with the intention of paying over the sum due at the first reasonable opportunity, although it might not, and naturally would not, be so paid by the delivery of that particular bill." [23]

It does not seem to the writer that this criticism is well founded. While the provision of the Code in question does admittedly lay out a straight and narrow path for the attorney, it is not an impossible or even exceedingly difficult one to follow. And in view of the fact that many of the cases of professional misconduct in dealing with a client's money doubtless had their origin in the very fact that the money was commingled with the private funds of the attorney for as innocent purposes as those mentioned, it would seem that the standard of conduct set up is not too high, but that, on the contrary, it is one which every attorney could well adopt without qualification for the protection of himself as well as his client, and should build into his every-day habit of professional conduct. The stress of circumstances through which the average lawyer passes furnishes enough temptation and will suggest plenty of plausible excuses for his departing from the ideal as set out, without its being weakened for him in the beginning by qualifications placed upon it by those who, because of their success and eminence, are naturally looked up to by him as standards for emulation. The following advice given in a little volume of danger signals [24] for the lawyer would seem to be a safer guide for the attorney in this respect. "You should not collect money for your clients, and retain it in your hands, or mingle it with your private funds. You may be perfectly honest in so doing, and intend to pay it over; but nevertheless, in a moment of weakness you may yield to the temptation to use it temporarily to relieve some real or fancied desire or necessity. Don't do this under any circumstances, for it is like driving a nail into your professional coffin. It may not be convenient to replace the sum when your client calls and asks you for a settlement, in which case you might be tempted to conceal from him the fact that you had received it, and to resort to subterfuges in order to put him off. If you do this you are paving the way to a reputation for rascality and meanness which you do not deserve, perhaps, and which will result in the client transferring his affections to another and more reliable attorney."

No reason is perceived why the attorney, whether he be the young attorney collecting small sums for various clients, or the attorney of ample means receiving large sums, cannot maintain a separate account in which to place all moneys belonging to clients which, for some reason, are not immediately remitted.

[23] 8 Columbia L. Rev. 543.

[24] You Should Not, by Samuel H. Wandell.

It seems to be quite a general practice for attorneys to open general accounts as attorneys, or in trust, entirely separate from their private funds, in which is placed all money belonging to the clients. While it is likely that the placing of the client's money in a general fund of this kind, without designation of the particular beneficiaries, would not relieve the attorney from personal liability as debtor in case the fund was lost through failure of the depositary,[25] yet such a course has the advantage of keeping the fund entirely separate, prevents its being used for personal purposes through accident or oversight, lessens the liability of the attorney to so use it intentionally, and insures him from the imputation of bad faith to which he is always liable if the funds of the client are commingled with his own.

This method is to be commended where it is not feasible to deposit the money in such a way that it will be clearly a trust fund, so that the attorney will be subject only to the liability of a bailee or trustee, instead of a debtor, in case of failure of the bank in which the deposit is made.

But whatever method may be adopted for keeping the money belonging to clients separate from his own, an attorney, by strictly adhering to the rule which the bar association has determined to be wise in such case, may be certain of avoiding the dangers to which he is subject in the handling of such funds.

[25] Naltner v. Dolan, 108 Ind. 500, 58 Am. Rep. 61, 8 N. E. 289. See, however, Pidgeon v. Williams, 21 Gratt. 251, where the attorneys were held not liable as debtors, where they deposited the money in a separate account, with the name of each client entered opposite the sum deposited for him, and Rogers v. Hopkins, 70 Ga. 454, where the attorney was relieved from liability by placing the money due his client in an account in his own name in her bank, in which he had no personal deposits, and giving her notice thereof.

Dr. Johnson's famous talk with Boswell on the ethics of advocacy contains this passage:

'What means may a lawyer legitimately use to get on?' Nice questions of casuistry arise. 'A gentleman,' says Boswell, 'told me that a countryman of his and mine, Wedderburn afterwards Lord Loughborough—who had arisen to eminence in the law, had when first making his way solicited him to get him employed in city causes. *Johnson:* 'Sir, it is wrong to stir up lawsuits; but when once it is certain that a lawsuit is to go on, there is nothing wrong in a lawyer's endeavoring that he shall have the benefit rather than another.' *Boswell:* 'You would not solicit employment, sir, if you were a lawyer?' *Johnson:* 'No, sir; but not because I should think it wrong, but because I should disdain it. However, I would not have a lawyer to be wanting to himself in using fair means. I would have him to inject a little hint now and then to prevent his being overlooked.'

# The Lawyer's Compensation

BY WALTER A. SWAN, B. A.

HOW often is heard the remark that this or that litigation was dropped, or not even undertaken, because "the lawyers would get it all anyway," and how unpleasant a commentary it is upon the integrity of those in the profession. To enter the legal profession in these days is to undertake the burden, not only of proving one's honesty, but of disproving that one is a crook; for while the general rule presumes every man honest until he is proven otherwise, in the case of the lawyer popular opinion seems to presume that he is dishonest. While much of this is said of the lawyer in the spirit of jest, there goes with it the more or less serious opinion on the part of the public that lawyers generally will bear watching.

So far as the matter of the lawyer's charges is concerned, perhaps the public is justified in its view, for what it knows of such matters is a knowledge based upon the many instances of preposterous charges which, because of their very excessiveness, becomes a matter of general and unfavorable comment. From the case of the well-known New York lawyer who unsuccessfully sued for a fee of $125,000 for services in the Thaw Case, to the country practitioner who, with scarcely the effort of turning his hand, settles a negligence action for a few hundred dollars and keeps one half or more, there range thousands of varied instances whose facts, if known, would write down as unscrupulous many prominent attorneys who now hold public favor.

From the occasional agitation of this question by bar associations, law journals, and the press in general, there appear to have resulted no very definite conclusions. All are agreed that a lawyer's compensation should be fair and reasonable, and unfortunately that is about as far as anyone can go, for the definition of what is fair and reasonable must of necessity be left to the attorney's conscience, and not every lawyer is given to introspection; when it comes to making charges, lawyers sometimes fail to recognize their conscience, and on such matters one can hardly consult a stranger.

Perhaps no more serious question presents itself to the young lawyer after he secures his client, than the matter of the charge to make for his services, and there is varying sympathy for the young attorney whose stenographer sent out a bill for $500 which her employer had conscientiously rendered for $50, and which was promptly paid as very reasonable. As in many interesting stories, we are not told the sequel, and whether the client ever again sought out that particular attorney must be left to conjecture.

Opinions differ as to the basis of legal charges, but, for the young lawyer, at least, it would seem that he would receive reasonable compensation were he to charge only for the time actually given to his client's cause, regardless of the amount involved. The arguments which uphold the making of charges according to the amount in litigation, as well as to the learning, skill, and reputation of the attorney, are not available to the young man who is just opening his practice; in the first place because cases involving large interests are not likely to come to the young attorney, and because only after long experience does the worth of his services justify charges for the somewhat intangible value of skill and reputation.

So varied are the circumstances which control the matter of making charges, that it seems impracticable to do more than suggest some of the more important considerations which should guide the lawyer in fixing the amount of his compensation. In the first place, there is a personal side. One attorney may charge twice as much as another for the

same services, and yet be possessed of no greater ability, and so for most lawyers there is the danger of overestimating the value of his work, as well as the possibility of underestimating it. The amount of time and labor given to the client's business furnishes, to both attorney and client, the most satisfactory basis upon which to fix the charges, and the amount to be charged per day or hour may very reasonably be determined by both the importance of the case and the amount involved. While an attorney is never justified in slighting any matter which is placed in his hands, he cannot be expected to give the time and attention to a case involving a small amount which he would give to one involving thousands of dollars or invaluable business interests. As a matter of fact the less important case would not demand anything like the amount of time and care that the big case would take, and the lawyer's remuneration should be measured accordingly. To turn to another profession for an illustration, take the relative importance in the physician's eyes of a case of measles and the much-dreaded typhoid. Possibly the doctor's charge for visits would be the same in both cases, but the responsibility and the constant care and worry of the more serious case unquestionably entitle him to a proportionate compensation.

It is interesting to turn to the opinions of the courts on this question, and to find that they generally uphold not only the attorney's legal right to rate his charges according to the difficulty of the questions raised and the amount in controversy, but the propriety from an ethical view point of thus determining his compensation. As early as 1821 a South Carolina court commented upon this subject as follows: "The prominent facts, then, which arrest the attention in this case, and point with force to the conclusion which ought to be drawn from them, are, the great value of the property in contest; to which may be added the doubtful nature of the right to be tried. The legal discernment and skill required in the arrangement and management of the causes involving principles complicated in their nature and difficult of solution, the awakened anxiety of the client embarking in such a contest, these considerations attach on the side of the employer. On the part of the attorney, the flattering and (from universal practice) I will add just, expectation that an ample remuneration would await his professional exertions, the laudable anxiety not to disappoint the fond hopes and high expectations entertained by the client, public opinion, a self-approving consciousness of merit, these, with ten thousand other honorable incentives which present themselves to liberal and correct minds, and which lead to infinite labor and exertion on the part of the counsel retained, certainly entitle him to a reward which ordinary causes do not call for or allow." [1]

The supreme court of Kansas thus expresses itself as to the manner of determining the value of legal services: "It is claimed that the premises on which the witness based his estimate of the value of the services rendered are erroneous,—that he had no right to consider 'the amount in controversy and the legal questions involved and the general importance of the case,' in making his judgment of the value of the services. But we think these were all proper and important elements in determining the value of the services. We know that an attorney is bound to fidelity to his client as much when the amount is $1 as when it is a million. His obligation is not changed. But it is in the knowledge of every professional man that when great interests are confided to his care he is expected to use the utmost diligence in the preparation of the case. He is not expected to nor does he limit his services by the rule of ordinary care and skill that governs him in an ordinary case." [2]

In a Michigan case the contention that the value of legal services was not dependent upon the value of the property in litigation called forth this comment: "It is very evident that the responsibility, the care, anxiety, and mental labor is much greater in a case where the amount in controversy is large than where it is insignificant, although, perhaps, the same

[1] Duncan v. Breithaupt, 1 M'Cord, L. 149.
[2] Ottawa University v. Parkinson, 14 Kan. 159.

questions might be raised in each case, or the more difficult questions arise in the case where the amount was of but slight consequence. Nor is this responsibility, care, and mental labor dependent alone upon the number of hours or days which may be given to the preparation and trial or argument of the case. This responsibility and mental anxiety is not so imaginative and shadowy that it should not be considered in arriving at a proper compensation to be allowed in fixing the value of the services rendered." [3]

In an action by an attorney to recover for professional services, a presiding justice of the New York supreme court said in the course of his opinion: "It requires no greater labor to draw a complaint or answer, or to render any other specific service in a case in which the amount involved is $1,000,000, than in one in which it is $100. And yet, every lawyer knows that the labor bestowed upon a case is, as a general rule, in proportion to the magnitude of the interest involved. While the labor in drawing a pleading may be no more when the amount involved is large than when it is small, yet the labor in the examination of authorities and documents preliminary to drawing it, and the care bestowed upon the pleading itself, would be much greater in one case than in the other. This extra care and labor must be compensated, and it may be measured with some degree of accuracy by the amount involved in the suit." [4]

The relation of reputation to compensation is something of which little can be said. When clients complain because they have to pay high for an attorney's services, because of his reputation, they lose sight of the fact that, in the case of great lawyers, reputation is generally an indicator of great ability. Counsel fees mount upward as a lawyer's reputation grows, and instances are not infrequent where fees in a single case amount to many thousands of dollars. The great corporate and other business interests have litigation which demands the services of men of ability, and the eminent lawyers who are thus engaged have such reputations that the amount paid for their services is often fabulous. The value of the lawyer's reputation is best told by the story of the attorney who was engaged in the trial of what he knew was a losing cause. In desperation he telegraphed to a very celebrated lawyer that he would pay him $1,000 for an hour of his time on the following morning. The trial progressed the next day until within an hour of the noon adjournment, when the great lawyer who had been summoned walked quietly into the court room and took his seat among the spectators. The opposing attorney observed the exchange of glances as the noted man entered, and, before the close of the recess, which shortly followed, proposed a settlement of the case.

If there is one rule for the lawyer to follow in determining the amount of his charges, it is that which forbids him to take advantage of his client. A wealthy client will stand some overcharging; a corporation will send its check just as promptly if a few hundred dollars are added to its annual account; a friendless widow who has but a few years to live will make little complaint when her bill is doubled; an ignorant foreigner will probably never know that in his suit for damages against a mining company the recovery went mostly to the lawyer. Such instances as these are not particularly common, but now and then the facts of such a case become public, to the disgrace of the entire profession. When every lawyer is absolutely fair with those for whom he does business, and when he makes no charge which he would not care to explain to the public, a step of importance will have been taken toward the removal of the prejudice which now stands against the legal profession.

[3] Eggleston v. Boardman, 37 Mich. 14.
[4] Garfield v. Kirk, 65 Barb. 464.

# Cross-Examination of the Perjured Witness

BY FRANCIS L. WELLMAN

**Being the part of Chapter IV from his remarkable book, entitled "Art of Cross-Examination," copyright 1908, by the MacMillan Company, New York, and reprinted in CASE AND COMMENT by special permission of the author.**

IN the preceding chapters it was attempted to offer a few suggestions, gathered from experience, for the proper handling of an honest witness who, through gnorance or partisanship, and more or less unintentionally, had testified to a mistaken state of facts injurious to our side of the litigation. In the present chapter it is proposed to discuss the far more difficult task of exposing, by the arts of cross-examination, the intentional fraud,—the perjured witness. Here it is that the greatest ingenuity of the trial lawyer is called into play; here rules help but little as compared with years of actual experience. What can be conceived more difficult in advocacy than the task of proving a witness, whom you may neither have seen nor heard of before he gives his testimony against you, to be a wilful perjurer, as it were out of his own mouth?

It seldom happens that a witnesses's entire testimony is false from beginning to end. Perhaps the greater part of it is true, and only the crucial part—the point, however, on which the whole case may turn—is wilfully false. If, at the end of his direct testimony, we conclude that the witness we have to cross-examine—to continue the imaginary trial we were conducting in the previous chapter—comes under this class, what means are we to employ to expose him to the jury?

Let us first be certain we are right in our estimate of him,—that he intends perjury. Embarrassment is one of the emblems of perjury, but by no means always so. The novelty and difficulty of the situation—being called upon to testify before a room full of people, with lawyers on all sides ready to ridicule or abuse—often occasions embarrassment in witnesses of the highest integrity. Then, again, some people are constitutionally nervous, and could be nothing else when testifying in open court. Let us be sure our witness is not of this type before we subject him to the particular form of torture we have in store for the perjurer.

Witnesses of a low grade of intelligence, when they testify falsely, usually display it in various ways,—in the voice, in a certain vacant expression of the eyes, in a nervous twisting about in the witness chair, in an apparent effort to recall to mind the exact wording of their story, and especially in the use of language not suited to their station in life. On the other hand, there is something about the manner of an honest, but ignorant, witness that makes it at once manifest to an experienced lawyer that he is narrating only the things that he has actually seen and heard. The expression of the face changes with the narrative as he recalls the scene to his mind; he looks the examiner full in the face; his eye brightens as he recalls to mind the various incidents; he uses gestures natural to a man in his station of life, and suits them to the part of the story he is narrating, and he tells his tale in his own accustomed language.

If, however, the manner of the witness and the wording of his testimony bear all the earmarks of fabrication, it is often useful, as your first question, to ask him to repeat his story. Usually he will repeat it in almost identically the same words as before, showing he has learned it by heart. Of course it is possible, though not probable, that he has done this and still is telling the truth.

Try him by taking him to the middle of his story, and from there jump him quickly to the beginning and then to the end of it. If he is speaking by rote, rather than from recollection, he will be sure to succumb to this method. He has no facts with which to associate the wording of his story; he can only call it to mind as a whole, and not in detachments. Draw his attention to other facts entirely disassociated with the main story as told by himself. He will be entirely unprepared for these new inquiries, and will draw upon his imagination for answers. Distract his thoughts again to some new part of his main story, and then suddenly, when his mind is upon another subject, return to those considerations to which you had first called his attention, and ask him the same questions a second time. He will again fall back upon his imagination and very likely will give a different answer from the first, and you have him in the net. He cannot invent answers as fast as you can invent questions, and at the same time remember his previous inventions correctly; he will not keep his answers all consistent with one another. He will soon become confused and, from that time on, will be at your mercy. Let him go as soon as you have made it apparent that he is not mistaken, but lying.

An amusing account is given in the Green Bag for November, 1891, of one of Jeremiah Mason's cross-examinations of such a witness. "The witness had previously testified to having heard Mason's client make a certain statement, and it was upon the evidence of that statement that the adversary's case was based. Mr. Mason led the witness round to his statement, and again it was repeated *verbatim*. Then, without warning, he walked to the stand, and pointing straight at the witness said, in his high, impassioned voice, 'Let's see that paper you've got in your waistcoat pocket!' Taken completely by surprise, the witness mechanically drew a paper from the pocket indicated, and handed it to Mr. Mason. The lawyer slowly read the exact words of the witness in regard to the statement, and called attention to the fact that they were in the handwriting of the lawyer on the other side.

" 'Mr. Mason, how under the sun did you know that paper was there?' asked a brother lawyer. 'Well,' replied Mr. Mason, 'I thought he gave that part of his testimony just as if he had heard it, and I noticed every time he repeated it he put his hand to his waistcoat pocket, and then let it fall again when he got through.' "

Daniel Webster considered Mason the greatest lawyer that ever practised at the New England bar. He said of him, "I would rather, after my own experience, meet all the lawyers I have ever known combined in a case, than to meet him alone and single-handed." Mason was always reputed to have possessed to a marked degree "the instinct for the weak point" in the witness he was cross-examining.

If perjured testimony in our courts were confined to the ignorant classes, the work of cross-examining them would be a comparatively simple matter, but unfortunately for the cause of truth and justice this is far from the case. Perjury is decidedly on the increase, and at the present time scarcely a trial is conducted in which it does not appear in a more or less flagrant form. Nothing in the trial of a cause is so difficult as to expose the perjury of a witness whose intelligence enables him to hide his lack of scruple. There are various methods of attempting it, but no uniform rule can be laid down as to the proper manner to be displayed toward such a witness. It all depends upon the individual character you have to unmask. In a large majority of cases the chance of success will be greatly increased by not allowing the witness to see that you suspect him, before you have led him to commit himself as to various matters with which you have reason to believe you can confront him later on.

To be Continued.

**"Ethics of Advocacy" continued from page 438**

Judges of England" said: "My noble and learned friend Lord Brougham said that an advocate should be fearless in carrying out the interests of his client; but I couple that with this qualification and this restriction—that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interest of his clients *per fas,* but not *per nefas:* It is his duty, to the utmost of his power, to seek to reconcile the interests he is bound to maintain, and the duty it is incumbent upon him to discharge, with the eternal and immutable interests of truth and justice."

"It is a popular but gross mistake," says Chief Justice Gibson,[14] "to suppose that a lawyer owes no fidelity to anyone except his client; and that the latter is the keeper of his professional conscience. He is expressly bound by his official oath to behave himself in his office of attorney with all due fidelity to the court as well as the client; and he violates it when he consciously presses for an unjust judgment. . . . The high and honorable office of a counsel would be degraded to that of a mercenary were he compelled to do the biddings of his client against the dictates of his conscience."

A well known writer on legal topics has said: "A determination . . . on the part of an advocate to devote himself at all hazards to the rescue of his client at the expense of the law, and, it may be, of truth, can have no vindication from the assumption that it is required by the principle of fidelity. It is rather subversive of that principle rightly understood. . . . The lawyer's duty to his client is to be honest, faithful, skilful, and diligent, and he owes and can justly give him nothing more." [15]

Perhaps no clearer statement of an advocate's duty can be found than that given in an address by W. R. Curran[16] on the Data of Professional Ethics, in which he said: "It is not the duty of counsel to clear guilty persons; but it is their duty to see that no one presumed to be innocent shall be robbed of the cloak of that presumption by a judgment of guilty except by due process of law, and to secure for that person on his trial the benefit of every safeguard that the law affords. Any less service than this on behalf of counsel makes him recreant to his duty; more than this, is beyond the scope of his duty. Within the narrow boundaries of this field must the advocate's battles be fought and the victory won or lost, and he is a good soldier who swings an unbroken blade above a clean shield."

But all this does not mean that a belief in his client's guilt should render the advocate lukewarm in his defense. As an eminent advocate has eloquently said: "It is the privilege, it is the obligation, of those who have to defend a client on a trial for his life, to exert every force, and to call forth every resource, that zeal, and genius, and sagacity can suggest. It is an indulgence in favor of life—it has the sanction of usage—it has the permission of humanity; and the man who should linger one single step behind the most advanced limit of that privilege and should fail to exercise every talent that heaven had given him, in that defense, would be guilty of a mean desertion of his duty, and an abandonment of his client."[17]

However much of a handicap on the zeal of an advocate, the deepening of a mere belief in his client's guilt into a moral conviction, even where the effect of the client's own admission, does not diminish his obligation. Here the interest of society which requires the punishment of the guilty is merged in the larger interest which demands that no one shall be punished whose guilt is not established by competent and sufficient evidence, before the proper tribunal, and

[14] Rush v. Cavenaugh, 2 Pa. St. 187.
[15] Dos Passos, The American Lawyer.
[16] Delivered before the Tazewell County (Ill.) Bar Association on February 10, 1908. Published in Illinois Law Review for May, 1908.
[17] John P. Curran, Trial of Sir Henry Hayes, for abduction of Miss Pike, Cork, April 16, 1801.

under a duly formulated charge. As Blackstone says: "Let the circumstances against the prisoner be ever so atrocious, it is still the duty of the advocate to see that his client is convicted according to those rules and forms which the wisdom of the legislature has established as the best protection and security of the subject."

A celebrated English advocate, Charles Phillips, was, in 1840, employed, together with a Mr. Clarkson, in the defense of Courvoisier, a Swiss valet, who was convicted and executed for the murder of his master. The evidence against the prisoner, who stoutly declared himself to be innocent, was wholly circumstantial; and his counsel were proceeding to conduct his defense upon the theory that he was the victim of an attempt to divert suspicion from the true perpetrator of the crime. On the morning of the second day of the trial, Courvoisier, staggered by the production of an unexpected witness, sent for his counsel and confessed to them that he was in fact the murderer. Phillips, in the statement published in reply to an attack upon his conduct upon this occasion, says: "When I could speak, which was not immediately, I said: 'Of course, then, you are going to plead guilty?' 'No Sir,' was the reply; 'I expect you to defend me to the utmost.' We returned to our seats. My position at this moment was, I believe, without parallel in the annals of the profession. I at once came to the resolution of abandoning the case, and so I told my colleague. He strongly and urgently remonstrated against it, but in vain. At last he suggested our obtaining the opinion of the learned judge who was not trying the cause upon what he considered to be the professional etiquette under circumstances so embarrassing. In this I very willingly acquiesced. We obtained an interview, when Mr. Baron Parke requested to know distinctly whether the prisoner insisted on my defending him; and, on hearing that he did, said I was bound to do so, and to use all fair arguments arising on the evidence. I therefore retained the brief; and I contend for it, that every argument I used was a fair commentary on the evidence, though undoubtedly as strong as I could make them. I believe there is no difference of opinion now in the profession that this course was right. It was not till after eight hours of my public exertion before the jury that the prisoner confessed; and to have abandoned him then would have been virtually surrendering him to death."

It has hereinbefore been suggested that a conviction or actual knowledge of his client's guilt may impose a severe handicap upon the zeal and earnestness of a conscientious advocate; and where he feels that he must inevitably betray such conviction, to the prejudice of the cause of his client, his duty to the latter will require him, wherever such action may be taken without too evident an abandonment of the cause, to turn over to another the active conduct of the case. It is related of Abraham Lincoln that sometimes after entering upon a criminal case the conviction that his client was guilty would affect him with a sort of panic. On one occasion he turned suddenly to his associate and said: "Swett, the man is guilty, you defend him, I can't," and so gave up his share of a large fee. At another time when he was engaged with Judge S. C. Parks in defending a man accused of larceny, he said "If you can say anything for the man, do it, I can't; if I attempt to the jury will see I think he is guilty and convict him." [18]

The application of the general principles with which the present discussion has up to this point been concerned, to the details of professional conduct, must give rise to many nice questions of casuistry upon which the most honorable men may honestly differ. The limits of this article permit only brief notice of a few of the more salient.

Thus, no matter how strong his conviction of his client's guilt, it is plainly the duty of counsel to demur to an indictment of doubtful sufficiency; and to fail to do so would be to betray the trust confided to him. He is likewise bound to take advantage of every question of law arising upon or after the trial. The biographer of William Green says with reference to his employment to make ap-

[18] From a sketch of Abraham Lincoln by William Elleroy Curtis.

plication for a writ of error in behalf of John Brown after the latter's conviction: "With no hesitating blade Mr. Green cut the Gordian knot of an ethical question, which has not yet ceased to disturb the hesitating consciences of less profoundly convicted practitioners of the law,—the question of whether the lawyer, who is fully assured of the guilt of his client, should yet exhaust all the weapons in the armory of defense in his behalf. No doubt entered Mr. Green's mind for a moment as to where his duty lay; and with a moral courage of the loftiest type, he permitted no thought of how the inflamed public opinion of the people among whom he lived might regard his espousal of the cause of the convicted leader. His duty lay clear and shining before him; and he performed it with as much zeal as if he had believed him innocent, and doubtless with as much ability as he had ever shown in any cause of whose entire righteousness he was convinced." [19]

In dealing with the facts, it is the duty of the advocate to guard with unremitting vigilance against the admission of any evidence which does not measure up to the standard of those legal rules which, "made to exclude all but the best kinds of proof, are in their very nature nothing else than merely artificial safeguards against the miscarriage of justice."

In seeking to rebut the evidence against the defendant he may bring out or establish such facts as may tend to explain such evidence upon some hypothesis other than that of the guilt of his client, and may attack the credibility of any witness whom he honestly believes to be unworthy of credence. But the ethical obligations which bound his duty in this respect, and which are indeed no other than should govern his defense of the innocent, require that he shall not seek to cast suspicion on those whom he knows to be guiltless, nor damage the character of witnesses whom he knows to be telling the truth.

He is bound to take advantage of any insufficiency of evidence; and the obligation which is upon him to do nothing inconsistent with his representative capacity precludes him from supplying any deficiency. With reference to this point Dr. Rogers says:[7] "It is always the duty of the prosecution, who have undertaken the burden of proof, to make out their case; and to suggest that it is the duty of a defending counsel to help them to do so in the interests of abstract justice, is not only wholly to misconceive the function of an advocate, but to advance a theory that is not likely to find support outside the jurisdiction of the courts of Utopia."

It seems also, although it may be admitted to be a matter of some nicety, that an advocate is warranted in setting up the defense of justification or irresponsibility, although such a plea may not appear to him to be well founded. It is a duty incumbent upon him in his representative capacity to say whatever can be said in extenuation, and to leave the responsibility for the acceptance or rejection of such plea with the jury, where it belongs.

But it is in submitting the case to the jury that advocacy is most likely to exceed its proper bounds. Here indeed, in the phrase of the Persian poet, a hair divides the false and true. An advocate may, in the words of Baron Parke hereinbefore quoted, "use all fair arguments arising on the evidence;" That is, he may expose weak and enlarge upon favorable evidence, and may advance any hypothesis which will tend to explain the case made against his client, always keeping in mind the qualification above noted that he is not to cast suspicion upon anyone known by him to be in fact innocent. On the other hand, he may neither distort the facts, misrepresent the law, nor indulge in fallacious reasoning.[20]

[19] Sketch of William Green, by Armistead Churchill Gordon.

[20] The advance in ethical conceptions in this regard is marked, and may be measured by contrasting the views expressed by lawyers of modern times with those of ancient writers.

Thus, Cicero makes the distinction that it is the duty of the judge to pursue the truth, but it is permitted to an advocate to urge what has only the semblance of it. He says he would not have ventured himself to have advanced this (especially when he was writing upon philosophy) if it had not also been the opinion of the gravest

Without going so far as to say it is not an uncommon, it may safely be said that it is not an unknown practice in our courts for an advocate to assert his belief in the innocence of his client, or in justice of his cause. Notwithstanding that among the offenders in this respect may be found such eminent names as

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of the Stoics, Panaetius.—Cicero, de Off. lib. 2, c. 14.

Baron Puffendorf in his Law of Nature, a book the perusal of which was once accounted a necessary part of the education of a gentleman, in a chapter entitled "Of Speech, and the Obligation which attends it," says: "But in Criminal Cases, where the Dispute regards only the Punishment, we judge it ought to be farther consider'd, whether the Council be assign'd by the Publick Authority, or by the particular Appointment of the Prisoner. If by the former, it doth not seem allowable for them to make use of feign'd Arguments and false Colours; since the Design of the Court in deputing them, was only that they might wipe off any Calumny thrown upon the Prisoner, and take care that he suffer no Injustice. Which End is sufficiently answer'd by a bare Refutation of the Proofs offer'd by the Accuser. But he whom the Prisoner particularly chooseth and retains to plead in his behalf, since he only acts as his Client's Interpreter, may, in our Judgment, lawfully use the same Method of Defence which the Prisoner might have used, had he answer'd for himself. "He is under a very great mistake," says Tully, "that fancies he hath got our real Opinion and Authority for all that he meets with in our Judiciary Orations. Whatever we delivered on those Subjects is to be ascribed to the Causes, and to the Times, and not to the Man, or to the Pleader." And in his Second Book of Offices he maintains, sometimes to defend a guilty Person, is not contrary to any Duty of Religion. Nor is Justice in any great danger of suffering by this Permission: For, since the Judge is supposed fully to understand the Law, the Advocate by producing false Laws or false Authorities. is not likely to prevail to any purpose: and he is never credit'd upon his bare Assertion, but is obliged to produce sufficient proof. And therefore, if a guilty Person do by this means sometimes escape unpunished, the Fault is not to be charged on the Advocate, or on the Prisoner, but on the Judge, who had not the wisdom to distinguish between Right and Wrong." (Kennet's Translation), bk. 4, chap. 1, par. 21.

A different conception of an advocate's duty is that entertained by David Hoffman, a member of the Baltimore Bar in the first half of the nineteenth century, renowned for his professional integrity, who among a set of resolutions framed by him for adoption by his students on admission to the bar included the following: "When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal or moral. be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavors to arrest or to impede the course of justice, by special resorts to ingenuity, to the artifices of eloquence, to appeals to the morbid and fleeting sympathies of weak juries, or of temporizing courts, to my own personal weight of character—nor finally, to any of the overweening influences I may possess from popular manners, eminent talents, exalted learning, etc. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any member of our pure and honorable profession; and, indeed, to no intervention beyond securing to them a fair and dispassionate investigation of the facts of their cause, and the due application of the law. All that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of client and counsel, or from some unworthy and selfish motive which sets a higher value on professional display and success than on truth and justice, and the substantial interests of the community. Such an inordinate ambition I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide, the gratuitous murderer, or other perpetrator of like revolting crimes, has surely no claim on the commanding talents of a profession whose object and pride should be the suppression of all vice by the vindication and enforcement of the laws. Those, therefore, who wrest their proud knowledge from its legitimate purposes to pollute the streams of justice and to screen such foul offenders from merited penalties, should be regarded by all (and certainly shall by me) as ministers at a holy altar full of high pretension and apparent sanctity but inwardly base, unworthy, and hypocritical—dangerous in the precise ratio of their commanding talents and exalted learning."

Luther Martin's conception of the duty which a lawyer owes to his client, disclosed in his argument on the impeachment of Judge Chase was, says Judge A. M. Gould, "that when counsel have done all that can be done to insure a fair trial for a client, if according to the clear, undoubted evidence, the latter is guilty, it is the duty of counsel to submit his client's case to the decision of the jury without any attempt to mislead them, and this whether counsel is appointed by the court or retained by the criminal." Mr. Martin said: "The duty of a lawyer is, most certainly, in every case to exert himself in procuring justice to be done to his client, but not to support him in injustice."

those of Brougham, Campbell, and Erskine,[21] a sounder view condemns this practice as in any case transcending the proper bounds of advocacy, and, where contrary to the advocate's personal beliefs, as violative of ethical obligations.[22] It is not his business to represent his client as innocent—it is sufficient that the law so presumes him. The advocate's personal opinion forms no part of his client's case; and if he makes it such he speaks for himself, and not in his representative capacity. The impropriety of the assertion of a belief in the justice of his client's cause where such belief is honestly entertained arises from the fact that a contrary inference would inevitably be drawn wherever such belief is not expressed; while if he asserts a belief contrary to his personal convictions he justly incurs the reproach of prostituting his own character for the sake of his fee.

It is not necessary to consider in connection with this subject practices which savor of fraud and chicanery, such as suppression of evidence and connivance at perjury. Such practices cannot be sanctioned in the most honorable cause—much less in an unjust one. The moral character of the advocate is not merged in that of his client; and the arms which he wields are, in the phrase of Sir Alexander Cockburn, to be the arms of the warrior and not of the assassin. The sentiment of the bar upon this phase of the question needs no vindication. The following language, taken from the code of ethics adopted by the Alabama Bar Association, has its counterpart in every other code indorsed by the profession: "It is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy the man's accountability to the Creator, or loosen the duty of obedience to law and the obligation to his neighbor; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake." "A lawyer who invents or manufactures defenses for prisoners," says the code of ethics of the San Francisco Bar Association, "or who procures their acquittal by the practice of any manner of deceit, cajolery, wilful distortion or misrepresentation of facts, or any other means not within the spirit as well as the letter of the law, is to be reckoned as an enemy to society and more dangerous than the criminal himself; while successes at the bar won by such methods can never be the basis of desirable professional reputations, but, on the contrary, are badges of infamy."

The whole matter may be summarized by saying that the ethical obligation of an advocate in an unjust cause is neither more nor less than rests upon him in the advocacy of any cause. "There is," said Sir James Hannen,[23] "an honorable way of defending the worst of cases." In so doing the advocate should remember the advice of Lord Eldon, that in cases of doubt and difficulty, *Quod dubitas ne feceris*, is a good rule of conduct.[24] The lawyer's greatest danger arises from his bias in favor of the cause which he represents. He should guard against excess of zeal, and in the glow of partisanship should not forget that he owes other duties than that to his client. He must make no distinction between his personal and his professional conscience; and in following its dictates should take care not to incur the charge, which an eminent man of letters is reported to have made against a famous English statesman, that the conscience which should have been his monitor had become his accomplice.

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[21] "If an advocate entertains sentiments injurious to the defense he is engaged in, he is not only justified but bound in duty, to conceal them; so, on the other hand, if his own genuine sentiments, or anything connected with his character or situation, can add strength to his professional assistance, he is bound to throw them into the scale."—Lord Erskine, in defense of Thomas Paine, tried for libel, Court of King's Bench, Guildhall, Dec. 18, 1792.

[22] This practice is condemned by Quintilian, although upon the grounds of expediency: "They likewise are arrogant who are peremptory in asserting the goodness of their cause, and that if it were not such they would not have undertaken it. The judges, indeed, cannot bear to hear one presume to exercise their function." Quint. Inst. bk. XI, chap. 1, § 3.

[23] In Smith v. Smith (1882) L. R. 7 Prob. Div. 89.

[24] In Cholmondeley v. Clinton, 19 Ves. Jr. 267.

# The Editor's Comments

What the Press is saying about law and lawyers.


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Edited by Asa W. Russell.

## *Discouragement of Litigation.*

IT has long been recognized as the duty of every lawyer to discourage litigation. Years ago Abraham Lincoln wrote: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser,—in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it."

This subject frequently receives timely comment in the public press.

The standard of ethics of the profession of the law, says the Pueblo Journal, is becoming higher. For that matter it always was high with the best practitioners, and these have consistently discouraged litigation. Conscientious, capable lawyers understand that their function is to expound the law, not necessarily in the courts, and indeed preferably elsewhere than in the courts, to keep their clients out of trouble; by good, sound, clear advice to render the highest possible service to those who seek their aid; to prevent litigation wherever possible, and thus to assure the greatest material gain and the minimum of litigiousness and quarreling.

But the fact remains that there are some lawyers who, either because of lack of ability or paucity of learning or absence of scruple or aversion to labor, will not familiarize themselves with the law as they should, or, knowing it, wilfully disregard it in order to promote litigation.

Again, there is that class of lawyers who are so exact, whose minds are so obsessed by the importance of trivialities and technicalities, that they lose sight of large matters at issue, and regard only the quibbles and quirks with which the law books abound.

These are things that deserve attention at the hands of reputable lawyers. The law is one of the noblest of callings, and its functions are of tremendous moment. Lawyers are all officers of the court, by virtue of their profession, and discredit attaching to them and to the profession is reflected in the popular mind by discredit of the courts themselves.

## *Young Lawyers in Politics.*

"SHOULD young lawyers keep out of politics?" asks the Houston Chronicle.

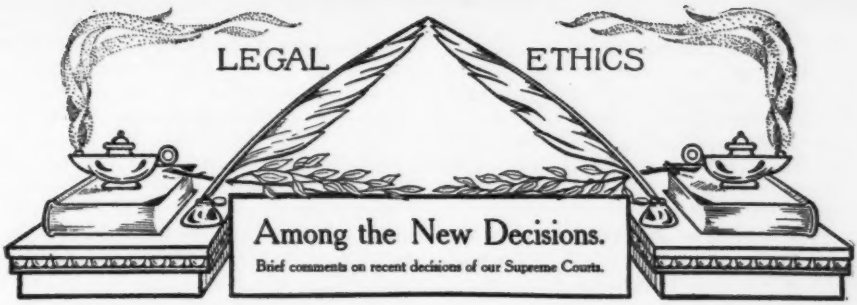
Speaking for the faculty at the close of the school year at Ann Arbor, Professor D. M. Thompson advised the senior class law students to study the topics of the times and contemporary public questions, but to keep out of politics.

He proceeded to give his reasons therefor, which at first reading appear to have much cogency, but upon further consideration are seen to be, perhaps, not quite so sound, as follows: "I should like to urge upon you," he said, "to avoid politics. I don't mean that you are not to be interested in the great questions upon whose solution will depend the future of the nation, but I would ask you not to ally yourself with any party, either Democratic, Republican, Socialist, or Prohibition. Rather stand aloof, studying each great political question that is presented to you as it comes up year after year. Study it well, and vote as your good judgment and your conscience tell you.

"Most lawyers cannot afford to go into politics; the offices pay so little and the cost of a campaign is so great. Make up your mind not to go actively into politics till you have practised law for twenty-five years. Then, if you have secured a competency, have won the regard and respect of your community through straightforwardness in that quarter of a century, go in and taste the sweets of political life, unhampered by the necessity of a hand-to-mouth existence,—a continuous fight with poverty. The most fatal mistake a young man can make is the neglect of his profession for the laurels of politics."

Commenting on this, the Lincoln (Nebraska) Star declares that there is nothing in this which might not be said to a class of farmers, and that it is quite unpatriotic to advise our young men to keep out of politics. "Suppose we said it to the young man learning any useful calling," the Nebraska paper argues, "What a fine lot of old fossils or uneducated young cubs we would have running our public affairs!"

Certainly it is better for all our educated young men to go into politics and try and govern the country for its good. The young lawyer is eminently fitted by training and ability to render valuable public service. In doing so, he need not neglect his profession. Campaigns are of short duration, and important political contests do not occur every year. But when vital issues are at stake the young lawyer ought not to shirk his duty. Political service is as essential to the state as military service. The demands of good citizenship are not always satisfied by merely casting a ballot. It is a false and selfish view of life, which would lead a man to forego participation in political affairs because it would prevent an unremitting application to his business.




**Action—service by publication—when commenced.**—There is apparently but little authority upon the question as to when an action based on service by publication is to be deemed to be commenced for the purpose of the statute of limitations. The recent Iowa case of Slater v. Roche, 126 N. W. 925, 28 L.R.A.(N.S.) 702, holds that in case process is served by publication, the action is not commenced, for the purpose of determining whether or not it is within the time allowed by the statute of limitations, until the publication is completed.

As appears by the note accompanying the L.R.A. report of the case, no decision has been found which holds an action to be commenced for this purpose before the filing of the petition and affidavit required in cases of service by publication.

**Attorney—purchase from client—burden of proof.**—It has been held in a few cases that an attorney is under an absolute disability to purchase the subject-matter of his retainer or of prospective or pending litigation from his client. But a contrary rule is sustained by the weight of authority.

The case of Hamilton v. Allen, 86 Nev. 401, 125 N. W. 610, holds that where attorneys purchase from their clients and resell the subject-matter of their employment, the burden is on them, when sued by their clients for resulting profits, to prove the original purchase price was fair. This decision is accompanied in 28 L.R.A.(N.S.) 723, by the recent cases on the right of an attorney to purchase the subject-matter of litigation from his client, the earlier decisions on the question having been treated in a note in 23 L.R.A.(N.S.) 679.

**Bills and notes—blank indorsement—parol explanation.**—An exception to the parol evidence rule is recognized where it is sought to introduce parol evidence in order to show, as between indorser and indorsee, that the indorsement was made merely to transfer the title to the owner of the instrument. This exception is based on the well-recognized exception that such evidence may be given to show want or failure of consideration.

Thus it is held in the Arkansas case of First Nat. Bank v. Reinman, 125 S. W. 443, annotated in 28 L.R.A.(N.S.) 530, that as between a bank holding a note and its immediate indorser in blank, parol evidence is admissible to show that he indorsed as its agent to transfer title to the note, including the fact that he sold certain property to the bank to be sold to the maker, and that the note was taken in his name and indorsed to the bank merely for its accommodation in the transaction.

**Broker—secret commission—duty to account.**—That a real-estate broker who, to secure the terms on which he is authorized to sell, effects an intermediate sale to one who for a bonus is willing to comply with the owner's terms and hold the property subject to such terms as the true purchaser can meet, thereby securing a commission of which his principal is ignorant, is bound to account to him for it, is held in Easterly v. Mills, 54 Wash. 356, 103 Pac. 475, annotated in 28 L.R.A. (N.S.) 952. This decision is in harmony with the earlier cases on the question.

**Carrier—receipt prepared by shipper—binding effect.**—Where a shipper tenders to a common carrier a form of receipt for

goods to be carried, which contains a limitation of the carrier's liability, and the carrier assents to its terms, it is held in the New Jersey case of Perrin v. United States Express Co. 74 Atl. 462, that the shipper is bound thereby, notwithstanding the receipt may be in a blank form, furnished by the carrier.

This holding is in conformity with the earlier authorities, as appears by the note appended to this case in 28 L.R.A.(N.S.) 645.

**Commerce—between intrastate points—passage into other state—effect.**—It may now be laid down that transportation between points in the same state, over a route part of which is in another state or territory, constitutes interstate commerce. Such is the last utterance of the Supreme Court of the United States upon the subject.

In conformity with this rule it is held in the Kansas case of Missouri, K. & T. R. Co. v. Leibengood, 109 Pac. 988, annotated in 28 L.R.A.(N.S.) 985, that an act requiring corporations and others operating railroads as common carriers to transport live stock within the state at a speed of not less than 15 miles per hour, unless prevented by some unavoidable cause (Laws 1907, chap. 276), does not apply to nor affect interstate commerce, and a shipment of live stock between points in the state, which passes for a short distance over the territory of another state, is interstate commerce, and noncompliance with the requirements of the statute in such a shipment affords no grounds for recovery against the carrier.

**Constitutional law—ex post facto laws—increasing penalty of bond.**—The question as to whether an act increasing the amount of a penal bond required in a criminal case comes within the constitutional prohibition against the enactment of *ex post facto* laws was considered, apparently for the first time, in the Nebraska case of State v. McCoy, 127 N. W. 137, 28 L.R.A.(N.S.) 583, holding that an amendatory act increasing the penalty of a bond essential to the suspension of sentence in a prosecution against a husband for abandonment is *ex post facto* as to prior offenses.

**Contract—medical services—validity.**—The question of the legality of an agreement between a physician and his patient by which the former agrees to render his services to the latter for life seems to have been but twice before the courts. The latest case on the subject is Re McVicker, 245 Ill. 180, 91 N. E. 1041, 28 L.R.A.(N.S.) 1112, which holds that a contract to furnish one medical attendance during life for a lump sum payable at his death is not void as against public policy, either because furnishing an inducement to threaten his life or as a wagering contract.

**Damages—ejectment from car—counsel fees.**—It seems to be settled that in actions for damages for tort where punitive or exemplary damages are recoverable, the jury may include a reasonable counsel fee as part of the damages. The question whether counsel fees may also be recovered when the tort is of such a nature that only compensatory damages can be recovered was raised in United Power Co. v. Matheny, 81 Ohio St. 204, 90 N. E. 154, which holds that in an action to recover damages for unlawfully and forcibly ejecting the plaintiff from a street car it was error for the court to charge the jury that, if they found that the ejectment of the plaintiff was not justified, but was without malice or insult, they could award compensatory damages only, and as part thereof they might allow plaintiff a reasonable sum for the services of counsel in his behalf.

This adjudication is in conformity with the modern cases. The decision is accompanied in 28 L.R.A.(N.S.) 761, by a note which discloses a few early cases in which it seems to have been held that counsel fees and expenses of bringing suit are recoverable as part of the damages in an action for tort, even though only compensatory damages were allowed. These cases, however, it is safe to say, cannot at the present time be regarded as authority.

**Election—destruction of registry list—effect.**—A novel question was considered in the recent Louisiana case of State ex rel. Reid v. Lebleu, 52 So. 849, 28 L.R.A.(N.S.) 989, holding that a registered voter is not disfranchised because of the

destruction by fire of all the registrar's records.

It is further determined that a voter who has registered, and whose registration papers are destroyed, is not in the category of a voter who has not registered; that he cannot be made to register anew, as if he had never before been a registered voter; and that while the registrar has authority to protect his office from imposition, at the same time he may permit registered voters to have their names placed on the new poll book.

**Equity—jurisdiction—unrelated claims.**—It has been laid down that equity will not assume jurisdiction over a proceeding to enforce the liability of the stockholders in an insolvent corporation, whether such liability is based upon a statutory provision, is for unpaid stock, or arises from some other transaction or dealing with the corporation, where such liability is fixed in amount and is due from different stockholders by reason of their individual liability, if the sole ground for equitable intervention is that a multiplicity of suits will thereby be avoided, even though to some extent there is a community of interest and a similarity of questions of law and fact involved in the controversy.

This is also the doctrine of Rogers v. Boston Club, 205 Mass. 261, 91 N. E. 321, holding that a bill in equity will not lie in behalf of a receiver of a club against its members, to recover from them dues owing under its by-law and the purchase money of supplies received from it, since the claims are cognizable at law, and are not common in such sense that they can be joined to prevent a multiplicity of suits.

The case law dealing with this subject is collated in a note accompanying this case in 28 L.R.A.(N.S.) 743.

**Equity—mistake of law—relief.**—It is held in Dolvin v. American Harrow Co. 125 Ga. 699, 54 S. E. 706, that an honest mistake of law as to the effect of an instrument, on the part of both contracting parties, when such mistake operates as a gross injustice to one and gives an unconscionable advantage to the other, may be relieved in equity, or under equitable pleadings, in a proper case.

This decision rests upon the principle that equity, in a proper case, will reform a contract so as to make it speak the actual agreement between the parties. It is accompanied in 28 L.R.A.(N.S.) 785, by an exhaustive note which discusses the large body of case law upon the subject.

**Execution—lien on legacy.**—In the West Virginia case of Park v. McCauley, 67 S. E. 174, 28 L.R.A.(N.S.)1036, it is held that a writ of fieri facias in the hands of an officer for execution is a lien upon a legacy given to the debtor.

This case seems to be one of first impression.

**Executor's account—funeral expenses—duty of court.**—It is held in the Ohio case of Kroll v. Close, 92 N. E. 29, to be the duty of the probate judge, upon the hearing of an administrator's or executor's account, whether exceptions have been filed thereto or not, to scan closely the amounts claimed to have been paid for funeral expenses; and that in the absence of statutory or testamentary provisions, the allowance for such expenses must be reasonable, having regard to the amount of the estate, the station in life of the deceased, and the customs of the people in the same station, and, if unreasonable and extravagant, should be disallowed even as against legatees and next of kin.

The recent decisions upon the question as to what items and amounts are allowable, as funeral expenses, against deceased's estate, are collated in a note appended to the report of this case in 28 L.R.A.(N.S.) 571, the earlier cases having been discussed in a note in 33 L.R.A. 665.

**Highways—obstruction—special damage.**—In general it may be said that an individual traveler on a highway is entitled neither to bring an action to abate an obstruction thereon nor for damages, unless his injury is different in kind and degree from that suffered by the public generally. But one having a contract with the Federal government to carry mail over a certain route six times a week, who is compelled to take a circuitous route because of the negligent

destruction of a bridge, is held in Sholin v. Skamania Boom Co. 56 Wash. 303, 105 Pac. 632, to suffer special damages giving him a right of action against the one through whose negligence the bridge was destroyed.

The case law upon the question whether the fact that one is prevented by an unlawful obstruction from using a highway causes him a special damage which will sustain an action by him against the wrongdoer is discussed in a note appended to this decision in 28 L.R.A.(N.S.) 1053.

**Injunction—deed—restrictive covenant—violation.**—That a court of equity will restrain, notwithstanding the changed condition of the neighborhood in which a lot is situated, the violation of a covenant in a deed conveying it, whereby the grantor, in part consideration for the conveyance, stipulates and agrees for himself, his heirs, and assigns, touching and concerning an adjacent lot which he then owns, "that the only building put upon said lot shall be a residence and the necessary attachments, and that it shall be used for no other purposes than that of a family residence, and shall cost not less than $5,000 for the residence alone," is held in Brown v. Huber, 80 Ohio St. 183, 88 N. E. 322, which is accompanied by a note in 28 L.R.A.(N.S.) 705, collating the cases on the right to enforce a restrictive covenant, as affected by a change in the neighborhood.

**Insurance—disability—liability for death.**—That death is not the kind of disability contemplated by a policy providing for indemnity to insured in case of his total disability is held in the recent Iowa case of Hill v. Traveler's Ins. Co. 124 N. W. 898, 28 L.R.A.(N.S.) 742, which follows the few earlier decisions on the question.

**Marriage—evasion of law—validity.**—The general rule in this country, contrary to the rule sustained by the weight of authority in England, is that the capacity of the parties to marry, as well as the formal validity of the marriage, is in general to be determined by the law of the place where the marriage is celebrated, rather than by the law of the domicil of the parties. Some of the cases, however, while conceding this to be the general rule, refuse to recognize the marriage, though valid by the law of the place where it was celebrated, if the parties were domiciled at the forum and went into the other state in order to evade the law of their domicil, upon the ground that it would be contrary to public policy of the forum to recognize such a marriage.

The general rule, however, was applied in the recent Nebraska case of State v. Hand, 126 N. W. 1002, holding that a marriage which is prohibited by statute because contrary to the policy of the laws of a state is yet valid if celebrated elsewhere, according to the laws of the place where celebrated, even if the parties are citizens and residents of the state, and have gone abroad for the purpose of evading the laws, there being no legislative enactment that such marriages out of the state shall have no validity there.

As appears by the note appended to this case in 28 L.R.A.(N.S.) 753, the general rule was applied notwithstanding the facts were such as to have rendered the exception applicable if the court had seen fit to adopt it. The decision is even stronger from the fact which appears from the briefs, that the marriage was challenged on the ground that it violated the miscegenation statute of Nebraska, and the case involved the right of the parties to live together in Nebraska in the marital relation, and not merely the question of property rights. It would seem that no statute on the subject of marriage would be more likely to be regarded as a distinctive part of the public policy of the forum, which the courts would not suffer to be evaded by a marriage between their own citizens celebrated in another state, than a statute forbidding marriage between persons of the white and colored races.

**Master and servant—explosives—lightning.**—The unusual question of the liability of the master engaged in blasting in quarries and mines, for injuries resulting from an explosion of dynamite by

lightning, was passed upon in the Iowa case of Brown v. West Riverside Coal Co. 120 N. W. 732, annotated in 28 L.R.A.(N.S.) 1260, holding that a master who negligently stores high explosives in a room provided for the use of workmen in storing tools and clothing and seeking shelter from storms cannot escape liability for the death of a workman killed by an explosion, by the fact that it was caused by lightning.

**Mortgagee—restrictive covenant—right to enforce.**—The right of a mortgagee of real property to enforce a building restriction imposed on neighboring property for the benefit of the property mortgaged appears to have been considered for the first time in Stewart v. Finkelstone, 206 Mass. 28, 92 N. E. 37, 28 L.R.A.(N.S.) 634, upholding the right of a mortgagee to maintain a suit to enjoin the violation of such a restriction.

**Public improvement—special assessment—attorney's fees.**—While there has been much conflict upon the general question as to the validity of statutory provisions for attorney's fees, there seems to be no doubt as to the validity of statutory provisions for such fees in proceedings involving collection of taxes or special assessments, the courts being agreed that the legislature may impose liability for attorney's fees upon delinquent debtors of the state or its agencies.

So, it has been held in the recent California case of Engebretsen v. Gay, 109 Pac. 880, annotated in 28 L.R.A.(N.S.) 1062, that the legislature may allow an attorney's fee against one whose delinquency makes necessary a proceeding to enforce a special assessment for public improvements against his property, although no such fee is allowed in his favor.

**Municipal corporation—injury to employee—necessity of notice.**—A statutory provision that all claims for injury alleged to have been caused by defects, want of repair, or obstruction of the streets of a city, must be presented to the council, is held in Giuricevic v. Tacoma, 57 Wash. 329, 106 Pac. 908, to be inapplicable to an injury to a workman engaged in repairing a street, by the fall of an electric light pole maintained therein, since the injury did not result from obstruction of the street as a place of travel, and the statute did not contemplate presentation of claims arising from failure to furnish employees a safe working place.

This is a question upon which there seems to be but two earlier authorities, both of which are considered in a note appended to the report of the case in 28 L.R.A.(N.S.) 533.

**Partnership—purchase of judgment—set-off**—It seems that there is no principle of equity which forbids one partner from purchasing with his own funds a judgment or other evidence of indebtedness against his copartner in business, or forbids him from enforcing its collection out of the firm assets.

The recent Virginia case of Miller v. Ferguson, 65 S. E. 562, 28 L.R.A.(N.S.) 618, holds that one member of a partnership organized for a limited purpose may purchase with his own funds a judgment against his copartner having no connection whatever with the partnership transaction, prior to the institution of any proceedings affecting the partnership affairs, or the existence of any funds out of which the latter is entitled to claim profits, and use the same as a set-off in settlement of its accounts.

**Public improvement—assessment of benefits.**—The theory upon which special assessments for public improvements are based and justified is that the property against which they are assessed derives some special benefit from the improvement. It follows, therefore, that the property can be assessed only to the extent that it is benefited by the improvement. Benefits arising from improvements which depend upon contingencies and future action of public authorities cannot be considered in estimating the assessment, though they may form part of a general plan for public improvement.

This is the view taken in the recent Missouri case of Kansas City v. St. Louis & S. F. R. Co. 130 S. W. 273, annotated in 28 L.R.A.(N.S.) 669, holding that benefits to accrue from an improvement consisting as a whole of the

cutting down of the grade of a street, the construction of a viaduct, and the acquisition of private property to widen a street, cannot be assesed to pay for the cutting down of the street and the acquisition of the property, where that would be of no benefit to the public without the viaduct, and no definite plan as to it has been adopted, but it is merely talked about as desirable, without any present means on the part of the municipality to build it.

The earlier cases generally held, in accord with Kansas City v. St. Louis & S. F. R. Co., that only such benefits can be considered as arise from improvements which have been expressly authorized and provided for.

**Railroad—side track—compulsory construction.**—It is quite generally held that, in the absence of constitutional or statutory provisions, a railroad company is not obliged to build sidings or spurs to connect its main tracks directly with the establishment of a private shipper, or to maintain such side tracks when built, or to permit or maintain connection therewith when they are built by the shipper.

But the case of State ex rel. Mt. Hope Coal Co. v. White Oak R. Co. 65 W. Va. 15, 64 S. E. 630, 28 L.R.A.(N.S.) 1013, holds that where, an order that "reasonable provision" be made by it for the transportation of coal and coke offered it for shipment, as required by W. Va. Code, 1906, § 2364, and the facts and circumstances demand it, a railroad company may be compelled by mandamus to construct and operate upon its right of way a side track and switch for that purpose.

The decision finds support in the earlier authorities, as appears by the note appended to the L.R.A. report of the case.

It has also been held in the recent Washington case of Northern P. R. Co. v. Railroad Commission, 108 Pac. 938, 28 L.R.A.(N.S.) 1021, that the attempt by the state to compel a railroad company to construct and operate a spur track to a private mill is void, as a taking of property for private use without due process of law.

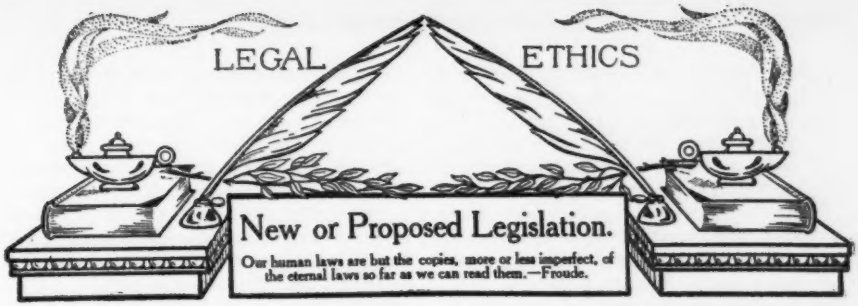
**Tax—voluntary payment—recovery.**—There is but little authority upon the question whether the fact that a taxpayer pays his tax for the purpose of obtaining a discount will render the payment involuntary, so that he may subsequently recover the amount paid if the tax proves invalid.

The cases dealing with this subject are collated in a note in 28 L.R.A.(N.S.) 1045, appended to the recent case of Louisville v. Becker, 129 S. W. 311, which holds that one who pays an illegal tax to secure the rebate allowed by law for prompt payment cannot recover the money paid, where, under the statute, he has a right to test in court the right to enforce the tax, and the taxing district has applied the money to the purposes for which it was collected.

**Trademark — infringement — use of own name.**—It is the general rule that while every person is entitled honestly to use his own name in business, either alone, or associated with others in a partnership or corporation, he may not use his name as an artifice to mislead the public as to the identity of the business or corporation, or the article produced, and thereby unfairly divert the business of another, who first lawfully selected the tradename, established a business, and produced an article which is identified by the name.

This principle was applied in Ætna Mill & E. Co. v. Kramer Milling Co. 82 Kan. 679, 109 Pac. 692, holding that a person will not be prohibited from using his own name upon marks or brands placed upon articles of his own manufacture, merely because it has first been rightfully used by another, who has established the reputation of, and built up trade in, like articles by the use of the same name in a trademark, sign, or label thereon; but such person will not be permitted, by any artifice or device or otherwise, to induce the belief of customers or others desiring to purchase that the articles so marked are the products of the other.

The case is accompanied in 28 L.R.A. (N.S.) 934, by the recent decisions on the question, the earlier authorities having been collected in a note in 1 L.R.A. (N.S.) 660.




**Municipal Government by Commission.**—The commission idea for the government of municipalities, says the Boston Transcript, seems likely to receive a wider hospitality in the middle West the coming year than at any previous time. The Illinois legislature passed an enabling act last spring, and as a result twenty-five cities in that state are preparing to vote on the question. At least a half-dozen cities in Michigan are on the same road, and about all the cities in Kansas not now under the commission plan are making ready to adopt it. Nor is the movement confined to the Mississippi valley. Practically every city in western New York, it is said, will be asking next winter for new rule charters, with the commission as the underlying idea.

**The Parcels Post.**—The local merchants of the country are very generally and very mistakenly opposed, says the California Weekly, to the parcels post idea. Here are a few figures not without interest in that connection. Number of rural routes in the United States, 40,000; monthly income per wagon, $14.92; monthly cost per wagon, $72.16; average load per wagon, 25 pounds; average load per express wagon, 1½ tons. Now just let those rural delivery routes do a parcels post business, and they will soon be able not only to earn their own way, and remove an enormous postal deficit, but perform a most acceptable service to the patrons of the routes, and stimulate local trade.

If Postmaster General Hitchcock will, in his forthcoming report, stop advocating a higher postal tax on newspapers and periodicals, the greatest educational influence the country possesses, and urge Congress to give the people a parcels post, so that the rural carriers will have something to carry beyond a few pounds on each trip, he will be doing something, observes the Farm Journal, that will redound to his credit by placing the postal service on a paying basis and satisfying the urgent demand of the people.

As we write it is announced that four more cities of "barbarous Mexico" are to have a parcels post agreement with the United States, by which packages weighing up to 11 pounds may be mailed from any part of the United States for the sum of 12 cents per pound, while within our own borders only 4 pounds may be carried between cities only a few miles apart, or across a river, and at a cost of 64 cents.

This anomalous condition does not lie within the province of the Postmaster General to correct, it rests with Congress.

With such a system established it is reasonable to expect that there will be an end of postal deficits, the public will be properly served, and the government will have no further incentive or excuse for interfering with the business and rights of publishers and the liberty of the press, and the full and legitimate influence and development of the public press.

**Rochester's Juvenile Court.**—The new law transferring to the Monroe County (N. Y.) Court jurisdiction in juvenile cases from all parts of the county became effective on January 1st.

Procedure under the new law in juvenile cases will be radically different from that which has hitherto been followed under the police justice. The chief aim of the reform movement which

resulted in the enactment of this and similar statutes is to remove cases in which the children are involved, as far as possible from the kind of surroundings usually found in a criminal court. The jurisdiction and powers of the county court being much broader than those of the police court, it is believed that the former will be better able to pursue the wisest course in each particular case. The sessions of the new juvenile court will not be public, and every effort will be made to eliminate notoriety that might prove a source of future embarrassment to the child.

The constitutionality of the Rochester juvenile court law has been questioned by Judge T. D. Hurley, editor of the Juvenile Court Record, in the January issue of that publication. Judge Hurley declares that this act is a menace to liberty. He summarizes its alleged defects as follows:

"First, star chamber hearings.

"Second, the superior rights of the state as against the parent.

"Third, informal notice or no notice at all to the parent.

"Fourth, the exclusion from the court room of persons interested in the case when the same is on hearing.

"Fifth, that the child should remain a ward of the court during his minority, subject to the visitation of the probation officer or other court appointee.

"Sixth, the state institutions are relegated to the class of third-rate boarding houses, without any rights in the premises whatever.

"Seventh, it fails to provide a definition for neglect or delinquency, leaving that fact to be determined solely by the judge.

"Eighth, the parent is denied the right to have his child committed to an institution which is controlled by persons holding the same religious views as the parent."

We shall submit to our readers in a future number such reply as the framers of the law may make in answer to Judge Hurley's criticism.

**Insurance against Unemployment.**—Unemployment, the bugbear of industrial communities, says an Exchange, has increased greatly of late years, especially in the highly industrialized countries of Europe. It is the problem of problems in England, while German economists have begun to study it in their thorough-going, practical way. The steady improvement in the technical processes by which products are turned out, the continual concentration of manufacturing enterprises into trusts, and the seasonal periods of inactivity that exist in many industries, have combined to create what has been called the reserve army of industry. All this is quite apart from the acute unemployment that is due to periods of industrial depression at times.

The Belgian answer to unemployment, which, from the fact that it originated in that city, is called "The System of Ghent," is insurance. The labor unions of Ghent collect dues from their members at work to form a fund for the maintenance of any who are legitimately idle. To this fund the city of Ghent contributes, so that to every dollar the union pays to unemployed members the city adds fifty cents. In this way the union's mutual insurance fund, which would be quickly depleted in time of depression, is kept up by municipal aid.

This system, which has been in vogue for six years, has spread to other Belgian cities, to those of Holland, Germany, France, Norway, and Denmark. In some cases a number of cities have combined their funds, so as to make the scheme more stable. Proper safeguards are maintained, so that unemployment due to strikes, lockouts, sickness, accident, or the fault of the individual workman, gives no claim to a share of the fund. Moreover, an idle workman must accept the first suitable work that is offered him, so long as the wages are up to the union scale. Thus an effective municipal employment bureau is built up in connection with the disbursement of the unemployment fund. This bureau finds work for the idle, and by a daily control card system keeps close tab on the beneficiaries.

The obvious criticism of this system for use in America, at least, is that it takes no cognizance of the nonunion workman, nor, in fact, of the unskilled laborer. As for the latter, it would be easy to provide

for him by public works, such as road building. This is the British plan. The tendency of the Ghent system, however, would be to force all skilled labor into unions, and that is a tendency that might not be entirely relished in this country of individualism and liberty. Nor has unemployment with us come to the pass, perhaps, where organized measures are necessary to fight it.

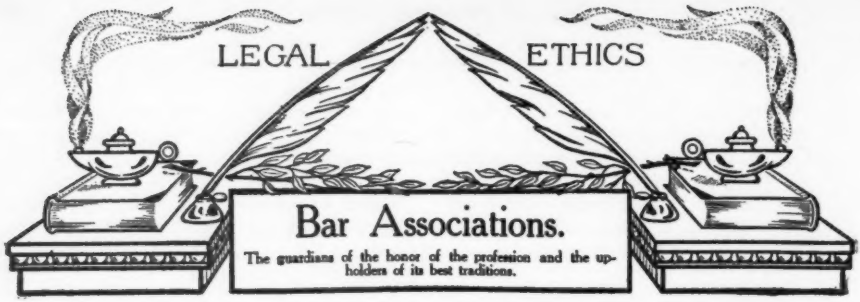
But insurance for unemployment is of a piece with old-age pensions and compulsory insurance against accident and sickness. We may yet find it necessary to adapt the System of Ghent to our own special needs.

**Compensation for Use of Inventions.**—In a paper read before the patent, trademark, and copyright section of the American Bar Association, Mr. George A. King, of Washington, District of Columbia, discussed the act of Congress approved June 25th, 1910, providing that the owner of a patented invention which is used by the United States without license may recover reasonable compensation by suit in the court of claims. Mr. King said in part: This legislature constitutes an important step forward in the recognition of the rights of patentees. Before the passage of this act the recovery of the patentee, for the use of his invention by the government, depended not so much upon the meritorious question whether his invention had been used by the government and a benefit derived therefrom, as upon the question whether the officer using the patent had had sufficient sense of justice to acknowledge that he was using the invention, and to make a promise of more or less distinctness that the government would compensate the inventor. Where the officer was willing to make such an acknowledgment, the inventor might recover under it in the court of claims. Where the officer defiantly infringed the patent, refusing to recognize, expressly or impliedly, the rights of the patentee, there was no remedy. Such a distinction was obviously unworthy of perpetuation in the jurisprudence of any civilized government.

The remedy by injunction against the officer was very unsatisfactory. It turned what should be regarded as an act of state on the part of the government, into a private tort of an individual.

It is a much more enlightened public policy to allow the government to avail itself, with perfect freedom, of the inventive skill of the world, subject only to the condition of the 5th Amendment to the Constitution, that the use of the inventor's property shall be accompanied by "just compensation."

Finally, the passage of this act can hardly fail to operate as a stimulus to inventors for the exercise of their genius in perfecting inventions which will be of value to the government; particularly, in those lines in which, as in the case of heavy ordnance, armor plate, and the other military and naval equipment, and to nearly the same degree, in improvements in lighthouses, postal devices, and many other lines, the invention can be of little or no value to anyone but the government.




### Code of Ethics.

A recent number of the Outlook gives a list of states whose bar associations have ratified and adopted the canons of ethics for the legal profession which were formulated and accepted by the American Bar Association two years ago. The list includes the bar associations of the seventeen following states: New York, Pennsylvania, Illinois, New Jersey, Maine, Iowa, Florida, Tennessee, South Dakota, Kansas, Indiana, North Dakota, Ohio, Washington, Nebraska, Louisiana, and Vermont. The Outlook goes on to explain that this has not been accomplished without opposition and discussion, and adds: But if we understand the facts aright, the opposition has been not to the principles embodied in these canons, but to the adoption by the states of the canons formulated by a national association. A certain characteristic of American pride or independence, prevailing curiously where state rights are not supposed to be popular, serves to prevent one state from accepting the ethical principles as formulated by any organization outside of that state.

If this is the correct explanation, comments the Omaha Bee, it certainly reflects a peculiar state of mind among lawyers who make up the various associations which have balked on indorsing the proposed professional code.

The animated discussion in the Pennsylvania Bar Association, says the Philadelphia Ledger, which preceded the adoption of the canons of ethics set forth by the American Bar Association, did not indicate any difference of opinion among the many able lawyers who engaged in it, upon any of the ethical principles involved. The difference was rather of judgment and taste as to the form of expression.

The authority of any code of morals or manners must depend upon the universality of its acceptance. A universal rule is more impressive than a local rule. If a representative body of the whole American bar has agreed in setting forth certain canons for the guidance of professional conduct, they must carry more weight than any similar code of rules adopted within a single state, even though these might be in some respects more explicit or more succinct.

It is easy to maintain, no doubt, that a code of ethics is of no practical use, that honor and propriety cannot be taught by rule, and that a man who needs to be cautioned against dishonorable conduct will not be deterred by mere formal precept. He may be if he knows that the precept expresses the conscience and judgment of his profession, and of those upon whose recognition he must depend. The usefulness of a code will depend upon the firmness and sternness with which it is enforced by the accredited authority of the profession.

### Work of New York's Grievance Committee.

During the last year 500 complaints have been filed against members of the bar, with the New York City Bar Association and the County Bar Association. This is an increase over last year of at least 170 cases. In the year 1909 the Bar Association received 370 complaints, which was an increase of 143 over the year before.

The cases that go direct to the Bar Association are handled by the grievance committee. This committee is made up of leading men in the profession. They

serve without further compensation than is furnished by the fact that they are driving out the crooks. Each complaint is investigated carefully. Many are dismissed by reason that they have little or no foundation.

The charges that the grievance committee is called upon to investigate run all the way from forgery and larceny to an effort on the part of a client to recover papers or other documents that have figured in litigation. The most common charge is breach of trust. Attorneys collect moneys on behalf of clients, turn the collections into their personal bank accounts, with the result that when they run short of funds they appropriate the money intrusted to them for their own uses. Subornation of perjury is not an uncommon complaint.

Out of the total number of complaints received last year testimony was taken in fifty-three cases. The committee decided that twenty-seven of these cases warranted prosecution in the courts The executive committee was called on to furnish prosecutors for these cases. A number of the actions demanded much time and application on the part of the prosecutors, as many intricate questions were involved. The defendants were represented by able counsel, and the cases in many instances went to the court of appeals. Among the lawyers who served the committee in the trials were William D. Guthrie, Egerton L. Winthrop, Jr., Abram I. Elkus, and Henry A. Stickney.

Unscrupulous and shrewd attorneys resort to many tricks to cheat clients and at the same time escape punishment. They are sufficiently clever to foresee or anticipate that their sharp practices will result in complaint, and prepare for such a contingency. As they go about doing what they should not do, they, at the same time, prepare a defense that will go far enough to save their skins. This is one of the reasons that action cannot be instituted against them by the representative of the Bar Association.

It is only a short time ago that many actions instituted against attorneys were killed by restitution; usually clients were satisfied to get what was due them, and had no desire to go further. But restitution will not save the offending lawyer now. The courts have held in effect that restitution only goes to show that an offense has been committed, and does not remove the cause for action.

In a majority of cases the court of appeals has sustained the decisions of the appellate division in decisions rendered in actions instituted against attorneys by the grievance committee. The Bar Association has fought the cases to a finish and won out. The lesson that lawyers have drawn from that fact is that, when the grievance committee gets after them, they must employ able counsel to defend them, and devote their time and efforts to save themselves from punishment. This situation has grown up only in the last three or four years.

Much of the time of the office force in handling the complaints in the first instance is given up to hearing charges that have only an imaginary foundation. All complaints are heard, no matter who the lawyer may be. There are people who get a taste of law and never recover from it. They go crazy on the law and become perpetual litigants. They run from one lawyer to another, demanding that all sorts of things be done for them. When the lawyers cannot see it their way, they go to the Bar Association with a complaint. Such cases never get beyond the original stage.

The association has asked for no aid, and will not; but there is a great chance for some philanthropist to establish a fund to assist in the work of cleaning up the legal profession.

### Chicago Bar Association's Grievance Committee.

"If you think that a lawyer has cheated you of your money, don't say to yourself, 'All lawyers are crooks,' and charge the amount up to profit and loss," advises John L. Fogle, attorney for the grievance committee. Take your complaint before the grievance committee of the Chicago Bar Association. "I should imagine," declared one to whom Mr. Fogle was talking, "that you would be beseiged with complaints against so-called 'shyster' lawyers." "The committee gets perhaps a hundred and fifty

complaints a year," replied Mr. Fogle. "Do you investigate every complaint you receive?" "Yes, though often it can be told, from the nature of the complaint and sometimes from the person who registers it, how it will have to be treated. When we receive a complaint from a lawyer's client, we note what the complainant has to say about the case, and submit it to the lawyer against whom it is directed. Then we wait for his answer. He prepares a reply to the charges, introducing all the evidence he can, stating his position as clearly as is possible for him to do. When the attorney's answer is forwarded to us we consider it carefully and decide whether disbarment proceedings should be brought against him, whether he should be reprimanded, or whether the charges are unfounded."

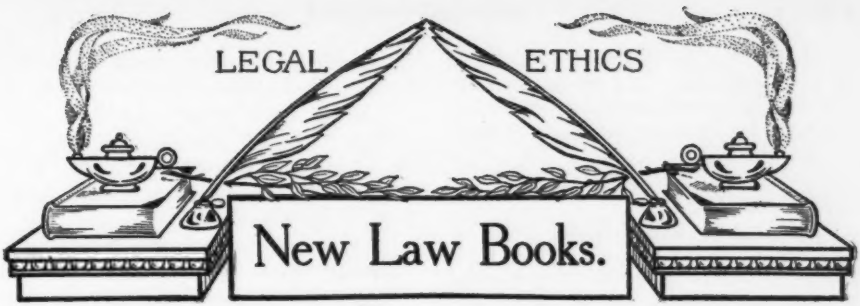
"It would seem," was suggested, "that the greater number of complaints would come from disgruntled persons who lost a poor case and who thought that their lawyer 'fleeced' them." "Many of them do," said Mr. Fogle. "Does the grievance committee find itself overworked with the investigation of those 150 charges yearly?" was asked. "It does not," was Mr. Folger's answer, "though if more persons knew that such an organization existed I imagine that there would be many more charges filed than we now receive."

The members of the grievance committee are James G. Handy, chairman, George E. Chipman, S. Crawford Ross, Ralph Crews, and Henry G. Miller.

### Position of Our Judiciary.

Honorable A. A. Bruce, of Grand Forks, the newly elected president of the North Dakota Bar Association, says upon this subject:

"Paradoxical though it may seem, there is no one who is closer to, and at the same time further removed from, the great masses of the American people, than the occupant of the bench. Especially is this true of the elective judge of an American court of last resort. He is constantly criticised and misunderstood. Yet he has no adequate means of defense. His duties are so arduous that he must of necessity be a student and a recluse. His position is so preeminently a political one, however, that he must of necessity keep responsive to the political and social tides, and pay heed to the politicians and to the powers behind the throne, whether the powers be populistic, corporate, or democratic in the broader and higher sense of the word. Especially is this true where the system of primary elections prevail. He is the subject of frequent criticism. Yet he has no popular forum. He is both of the world and out of the world. He depends for election upon the public support and the popular suffrage. Yet his office is so surrounded by tradition and dignity, and so careful must he be not to express an opinion in advance on the questions which may come later before him for judicial determination, that he can but rarely appear upon the public platform, and but rarely defends himself or his decisions in the popular press. He has the Law Reports, it is true, in which he may write, but these the general public never read. His position demands the highest wisdom and the fullest opportunity for ample thought and complete freedom from petty annoyances. Yet he has no opportunity for this ample thought and no freedom from annoyance."




"New Code of International Law."—By By Jerome Internoscia. (International Code Co., New York) $12.00.

The author presents in this work a proposed International Code, dealing with the various phases of public international law and private international law, and which includes chapters defining the organization and powers of a proposed international assembly, the jurisdiction of the necessary courts, rules of procedure, and the methods of executing their judgments.

Mr. Internoscia is a resident of Montreal, a graduate of McGill University, a member of the bar of the Province of Quebec, and has acted as Consul General for Italy.

The text is arranged in three parallel columns composed of English, French, and Italian,—languages by the use of which the population of half the globe may be appealed to. The work is compiled from the laws, treaties, and treatises that have been published in these tongues, so edited and arranged as to form a system of jurisprudence of world-wide application and designed to further the advent of the "era of universal peace," to the advancement of which the work is dedicated.

This Code, which has been prepared with great labor and at large expense, will interest the publicist and statesman, the jurist, the advocate of arbitration, and the lover of peace. It is prophetic of the coming age in which the nations of the world will be brought closely together by the bonds of universal law.

"Income Taxation."—By Kossuth Kent Kennan. (Burdick & Allen, Milwaukee, Wis.) $3.50 net.

This work discusses the important question of income taxation from a practical, rather than a theoretical, standpoint. It presents the methods and results of such taxation as disclosed by the experience of some forty-five foreign countries which have adopted it, and devotes four interesting chapters to a discussion of the history and operation of income taxation in the United States.

The author presents a general review of the litigation which has arisen in reference to the Federal income tax of 1894, and the pending cases involving the validity of the corporation tax law. He believes that we should avail ourselves of the practical knowledge of others in the formulation of such income tax laws as we may hereafter adopt, and he has done much in his book to make that knowledge available.

The work is replete with condensed information much of which has been gleaned from books in foreign languages not readily accessible to the average reader. The numerous references contained in the notes and the bibliography appended to the book open a wide field of research to the inquirer who desires to become familiar with the learning upon this subject.

"Black's Law Dictionary."—By Henry Campbell Black M. A. (West Publishing Co., St. Paul, Minn.) Second Edition. $6.00.

Black's Law Dictionary has occupied a unique position since its first publication. It is the most complete one volume law dictionary published, and has been especially popular with students. It has also been a favorite with lawyers who wish to get the most working value in a complete library. In the new edition Mr. Black has carefully revised every part of the work, and has added many citations to decided cases, as well

as new terms, particularly in the field of legal medicine. We believe that the work can be recommended to all classes.

**"Real Estate Brokers."**By Fred L. Gross. 1 vol. Buckram, $4.

**Joslyn on "Corporations."**—(Illinois) 1 vol. Buckram, $5.

**"The Modern Criminal Science Series."**——A series of translations of the most important works of eminent continental authors on criminal science, issued under supervision of American Institute of Criminal Law and Criminology. In 9 vols. First 2 vols. now ready. Vol. 1, "Modern Theories of Criminality."—by C. Bernaldo de Quiros. Translated by Dr. Alphonso de Salvio. Cloth, $4 Vol. 2, "Criminal Psychology."—By Hans Gross. Translated by Dr. Horace M. Kallen. Cloth, $5.

**Mikell's "Cases on Criminal Procedure."**—(American Case Books Series) Buckram, $3.50.

**"The New Code of Georgia."** — By Judge John L. Hopkins. Special edition-de-luxe. Full limp Russia binding, 8¾x6, $10. Full limp Russia binding, 9⅝x7¼ (having 1¼ inch more margin for notes), $11.50. Interleaved with onion skin linen paper, every other leaf being entirely blank, $16.50.

**"Georgia Laws 1910."**—$2.10.

**"The Principles of International Law."**—By T. Joseph Lawrence. 4th ed. $3.

**"Law, Lawyers, and Lambs."**—By Stillman F. Kneeland. $1.50.

**"Commentaries on the Law in Shakespeare."**—By Edward J. White. 1 vol. $3.50.

**"Digest of Mississippi Decisions."**—By M McWillie & Thompson. Including vols. 74–93 Mississippi, both inclusive. $10. To be ready for distribution during the present year.

**"1910 Supplement to Birdseye-Cumming & Gilbert's Annotated Consolidated Laws of New York."**—Canvas, $6.

**"New Supplementary Digest of Oregon Reports."**—Covering vols. 44–54 inclusive. Connecting with Montague's Digest of vols. 1–43. 1 vol. $7.50.

**"Popular Law-Making."**—A study of the origin, history, and present tendencies of law-making by statute. By Frederic J. Stimson. Cloth, $2.50.

**"Trusts and Trustees."**—By Jairus W. Perry, 6th ed. Edited by Edwin A. Howes, Jr. 2 vols. Law Canvas, $13.

# Recent Legal Articles in Law Journals and Reviews.

**Abatement.**

"Construction of 'Survival Act' and 'Death Act' in Michigan."—9 Michigan Law Review, 205.

**Adoption.**

"Adoption without Consent of Natural Parents."—17 Case and Comment, 391.

**Assignment.**

"The Validity of Laws Regulating Wage Assignment."—5 Illinois Law Review, 343.

**Attorneys.**

"The Man Behind the Lawyer. (Legal Ethics.)"—43 Chicago Legal News, 143.

"The Code of Ethics."—41 National Corporation Reporter, 529.

"Professional Rights and Wrongs."—32 Australian Law Times, 38.

**Automobiles.**

"License Duties on Motor Cars."—74 Justice of the Peace, 566.

**Bankruptcy.**

"Bankruptcy Law, Its History, and Purpose."—52 Legal Adviser, 5.

**Blackstone.**

"Sir William Blackstone."—46 Canada Law Journal, 716.

**Bridges.**

"Railway and Canal Bridges."—74 Justice of the Peace, 603.

**Champerty.**

"Maintenance and Champerty."—46 Canada Law Journal, 713.

**Congress.**

"The Legislative Power of Congress under the Judicial Article of the Constitution."—25 Political Science Quarterly, 577.

**Conspiracy.**

"Criminal Conspiracy Needing Overt Act to Make it Indictable."—71 Central Law Journal, 387.

**Constitutional Law.**

"A Government of Law or a Gov-

ernment of Men."—193 North American Review, 1; 43 Chicago Legal News, 158.

"State v. Federal Control."—3 Lawyer & Banker, 415.

"The Force and Effect of the Thirteenth Amendment to the Constitution of the United States when Considered in Reference to the Treaty Made in 1803 between France and the United States, Respecting the Cession of the Territory of Louisiana, and the Force and Effect of Such Amendment Considered Apart from Such Treaty."—71 Central Law Journal, 441.

"The Three Last Amendments to the Constitution of the United States."—44 American Law Review, 561.

**Corporations.**

"The Practical Features of Corporate Organization and Management."—10 The Brief, 201.

"Corporation Liens on Stock."—41 National Corporation Reporter, 635.

"Practice of Law by Corporations."—41 National Corporation Reporter, 529.

"Impolicy of Modern Decision and Statute Making Corporations Indictable and the Confusion in Morals Thus Created."—71 Central Law Journal, 421.

**Courts.**

"Changing Attitude of Courts toward Social Legislation."—5 Illinois Law Review, 222.

"Criticism of Courts by Lawyers and Laymen."—10 The Brief, 186.

"The Illinois Supreme Court and Its Method of Work."—43 Chicago Legal News, 131.

"The Methods of Work in the Illinois Supreme Court."—43 Chicago Legal News, 134; 41 National Corporation Reporter, 500.

"Where Defendant is a Nonresident, by What Acts, without Taking up Residence Therein, can He Make it Possible for the Legislature and the Courts of Another State to Adjudicate against Him without His Consent."—71 Central Law Journal, 404.

"Courts and Procedure in Germany."—5 Illinois Law Review, 193.

**Criminal Law.**

"The Essentials of Crime."—11 Criminal Law Journal of India, 113.

"Criminal Responsibility of the Insane."—3 Lawyer & Banker, 435.

"Reform of Criminal Procedure."—1 Journal of Criminal Law and Criminology, 705.

"Too Much Expected of a Criminal Judge."—59 University of Pennsylvania Law Review, 215.

"Crime and Punishment."—1 Journal of Criminal Law and Criminology, 718.

"Cruel and Unusual Punishment."—5 Illinois Law Review, 321.

"Public Defense in Criminal Trials."—1 Journal of Criminal Law and Criminology, 735.

"The Parole Law."—41 National Corporation Reporter, 497.

"Juvenile Offenders and Their Treatment."—17 Case and Comment, 387.

**Democracy.**

"Radical Democracy in France. IV."—25 Political Science Quarterly, 656.

**Dentists.**

"The Word 'Qualified' in the Dentists Act."—32 Australian Law Times, 33.

**Depositions.**

"Taking Depositions out of Court."—74 Justice of the Peace, 578.

**Distress.**

"Charges for the 'Man in Possession' in Distresses for Rent."—130 Law Times, 98.

**Divorce.**

"Divorce — Agency."—41 National Corporation Reporter, 530.

**Equity.**

"Equity Jurisdiction in Illinois over Irregularities in Execution Sales."—5 Illinois Law Review, 203.

**Evidence.**

"The Burden of Proof where Mental Incapacity is Pleaded."—44 American Law Review, 538.

"Needed Reforms in the Law of Expert Testimony."—1 Journal of Criminal Law and Criminology, 698.

"Circumstantial Evidence."—74 Justice of the Peace, 577.

**Executors and Administrators.**

"Power of Personal Representative to Continue Decedent's Business."—23 Bench and Bar, 96.

**Fraudulent Conveyances.**
"Frauds and Preferences." — 44 American Law Review, 481.

**Highways.**
"Culs-de-sac as Highways."—74 Justice of the Peace, 566.

**Incompetent Persons.**
"The Chargeability of Pauper Lunatics."—74 Justice of the Peace, 613.

**Infants.**
"Child Labor Legislation."—17 Case and Comment, 379.
"Control of Children by the State." —17 Case and Comment, 383.

**Jury.**
"Reform of the Jury System."—3 Lawyer & Banker, 444.
"Trial by Jury in Civil Actions."—16 Virginia Law Register, 561.

**Korea.**
"The Reconstruction of Korea."—25 Political Science Quarterly, 673.

**Law.**
"The Layman and the Law."—3 Lawyer & Banker, 418.
"Progress of the Law."—43 Chicago Legal News, 167.
"Festina Lente. (Legal Progress.)" —59 University of Pennsylvania Law Review, 203.

**License.**
"Licenses for Tradesmen's and Farmers' Carts."—74 Justice of the Peace, 614.
"Cinematograph Exhibitions—Conditions Which may be Imposed by the Licensing Authority."—74 Justice of the Peace, 601.

**Master and Servant.**
"Compensation to Workmen Suffering from Disease."—130 Law Times, 75.
"Liability of Master for Wilful or Malicious Acts of Servant. II."—9 Michigan Law Review, 181.
"Employers' Liability Policies."—44 American Law Review, 513.

**Mechanics' Liens.**
"How to Draw Notices of Mechanics' Liens."—23 Bench and Bar, 13.

**Mines.**
"The Law Relating to Support."—32 Australian Law Times, 39.

**Mortgage.**
"The Mortgage Recording Tax."—25 Political Science Quarterly, 609.

**Parishes.**
"The Sale of Parish Property."—74 Justice of the Peace, 590.

**Pensions.**
"The Pension Carnival: Favorite Frauds for Tricking the Treasury."—21 The World's Work, 13917.

**Pleading.**
"A Bill for an Act Concerning Pleadings."—5 Illinois Law Review, 364.

**Practice and Procedure.**
"Recent Cases on Summary Jurisdiction Practice."—74 Justice of the Peace, 590.
"Revision of Court Procedure in Illinois—A Symposium of Judges."—5 Illinois Law Review, 350.
"A Proposed Judicature Act for Cook County."—5 Illinois Law Review, 336.

**Principal and Agent.**
"Wrongful Application of Another's Money by a Defaulting Trustee or Agent."—59 University of Pennsylvania Law Review, 225.

**Public Lands.**
"Southern Pacific Lands."—3 Lawyer & Banker, 451.

**Public Policy.**
"Some Late Workings of the Doctrine of Public Policy."—44 American Law Review, 551.

**Race Suicide.**
"A Neglected Factor in Race Suicide."—25 Political Science Quarterly, 638.

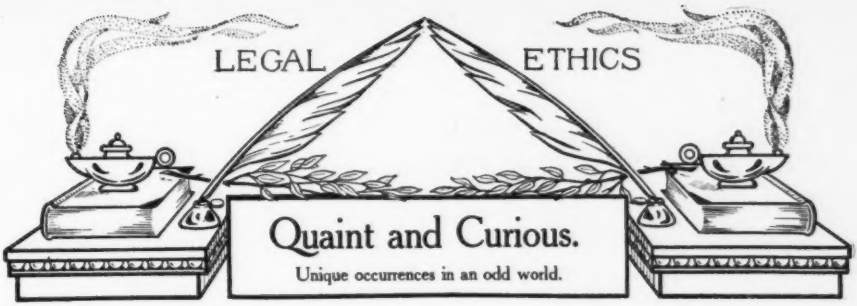
**Railroads.**
"Masters of Capital in America: The Inevitable Railroad Monopoly."—36 McClure's Magazine, 3.

**Rates.**
"Charter Contracts and the Regulation of Rates."—9 Michigan Law Review, 225.

**Senate.**
"The California Senatorial Situation."—3 Lawyer & Banker, 423.

**Taxes.**
"Illinois Central Tax Case."—41 National Corporation Reporter, 534.

**Wills.**
"Conditions in Will as to Consents to Marriage."—32 Australian Law Times, 37.




**Regulating Attorneys.**—We are indebted to William M. McCrea, Esq., of Salt Lake City, for the following interesting extracts from a statute passed by the Utah territorial legislature in 1852, and entitled, "An Act for the Regulation of Attorneys:"

"Sec. 2. No person or persons employing counsel in any of the courts of this territory shall be compelled by any process of law to pay the counsel so employed, for any services rendered as counsel, before or after, or during the process of trial in the case."

"Sec. 5. Any attorney or person assuming to appear before any court in this territory, in any cause whatever, shall present all the facts in the case, whether they are calculated to make against his client or not, of which he is in possession, and shall present the best evidence that he can in the case to the intent that the true state of the case in litigation may be presented before the court, and for a failure to do so, or to comply with all the requirements of this act, shall be liable to all the penalty hereinbefore provided for, and the further penalty of not less than $1 at the discretion of the court."

In 1854 the legislature further decided that "no laws nor parts of laws shall be read, argued, cited, or adopted in any court, during any trial, except those enacted by the governor and legislative assembly of this territory, and those passed by the Congress of the United States when applicable; and no report, decision, or doings of any court shall be read, argued, cited, or adopted as precedent in any other trial."

**Have Minds, if not Souls.**—A headnote appended to the report of a case in a recent publication consists of the following definition: "A corporation is an intellectual body created by law."

**Had Hopes.**—In Myers v. Pickett, 1 Hill, Eq. 35, O'Neall, J., in applying the rule in Shelley's Case, said: "Notwithstanding I am not well satisfied with either the justice or the reason of the rule, yet I must be content to say, *Ita lex scripta,* and console myself by what is said by one of the great masters of the science of the common law, 'that at some other time, in some other place, and on some other occasion, the wisdom of the rule may appear.'"

**Do it Quick.**—The plaintiff obtained judgment against the defendant for $150 in an action brought before a justice of the peace in Kansas. The defendant, without consulting his attorney, paid the amount into the justice's court, after his attorney had filed notice of appeal to the district court, and in the meantime the justice had paid the amount to the plaintiff. In his transcript to the district court the justice made this explanation of the transaction:

"By an order from Attorney Smith through and by defendant Jones verbally the court is ordered indirectly to get the money paid out from the above judgment back into court & do it quick. Having been and always being subject to the attorneys, the court now, this P. M. Sept. 21st orders both plaintiff and his attorney to return all funds immediately into court."

**Weary of Well Doing.**—A notice of sale of property to satisfy an agister's lien, recently posted in a Kansas city, describes the property and the reasons for making the sale, in this felicitous manner:

One mare, age unknown, color gray, weight about 900 pounds; One top buggy and one set of double harness, or so much thereof as will pay the reasonable charges and expenses for the feed and care bestowed upon said property, said sale being for the purpose of paying said reasonable charges and expenses for the feed and care bestowed upon said property, including the expense of said sale and incident thereto, due, accrued and accruing, said property being the property, presumably, of the world famous renowned and omnipresent John Doe, who placed said property in the care and keeping and submitted the same to the tender mercies of the undersigned at some date during the early part of the present Century, at the same time leaving with the undersigned his solemn promise that he would return and claim his property and pay the reasonable charges of the undersigned for feeding, sheltering and caring therefor, which said property, together with the said solemn promise of the said owner, is still in the care and keeping of the undersigned who, having troubles of his own would fain be relieved of the care and custody of said property and of the said solemn promise of the said owner thereof.

WHEREFORE, the undersigned, hereby gives notice to all the world, including the owner of said property, that he will sell said property, as above stated, and he hereby prays that all mankind who may be in need of such property may be present in their own proper persons at the time and place of said sale, there and then to bid upon said property, to the end that the undersigned may not suffer serious loss as a result of his kindness in feeding, sheltering and caring for said property during the temporary absence of the owner thereof.

WHEREOF, fail not at your peril.

**A Poetic Conveyance.**—We are indebted to Mr. L. R. Atkins, of Chicago, for an account of the following quaint and curious deed: In book 40 Records of Deeds, in the circuit clerk's office at Virginia, Illinois, is a quaint reminder of the late J. Henry Shaw, a brilliant lawyer and author, who represented Cass county in the legislature in the early eighties, dying suddenly of heart failure while at the capital in 1884.

The gifted but unfortunate statesman was a *protégé* of War Governor Richard Yates, a contemporary and friend of Lincoln, and had a meteoric career, which is a matter of history. The fatal love of strong drink caused an estrangement from his family, and his last years were melancholy. The pathetic instrument appended was filed for record August 9, 1881:

J. Henry Shaw to Charles E. Wyman.

I, J. Henry Shaw, the grantor, herein,
Who live at Beardstown, Cass county, within,
For Seven Hundred Dollars to me paid to-day,
To Charles E. Wyman do sell and convey,
Lot Two (2) in Block Forty (40), said county and town,
Where Illinois river flows placidly down,
And warrant the title forever and aye,
Waiving homestead and mansion both a good-bye,
And pledging this deed is valid in law, I add herewith my signature
J. Henry Shaw.
(Seal)
July 25, 1881.

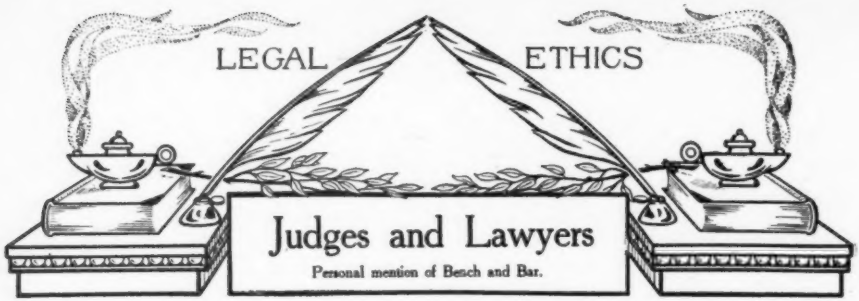
I, Sylvester Emmons, who lives at Beardstown,
Justice of the Peace of fame and renown,
Of the County of Cass, and Illinois state,
Do certify here that on this same date,
One J. Henry Shaw to me did make known
That the deed above and name were his own—
And he stated he sealed and delivered the same
Voluntarily, freely, and never would claim
His homestead therein; but left all alone,
Turned his face to the street and his back to his home.
S. Emmons, J. P.
(Seal)
Aug. 1, 1881.

**Grand Jury Indicted Foreman.**—Among the indictments brought in for gambling by the recent grand jury, one is against J. C. Ross, a prominent merchant of Gulfport, Mississippi, who was foreman of the jury. In some manner, in signing the indictment, Mr. Ross's name was written in the body of the indictment, and, before the mistake was discovered, the grand jury had adjourned and there was no way to remedy the defect. Ross was arrested and made to give bond for his appearance, but when the case is brought up for trial at the next term of court the district attorney will dismiss the case. The individual against whom the indictment was intended is free.

**Badly Scared.**—In a Missouri nisi prius court recently a suit was in progress in which the plaintiff was seeking to recover for services rendered and material furnished. During the trial the attorneys for the defense had made frequent allusions in regard to the reputation of the plaintiff, but had introduced no evidence on that point. It was a very warm day, and the attorney for the defendant had retired to an adjoining room, where he had removed his coat and waistcoat and was enjoying a calm, cool smoke while one of the attorneys for the plaintiff was making his closing argument to the jury. The other attorney for the plaintiff was sitting in the witness stand. During his argument the plaintiff's lawyer said: "They have insinuated throughout the trial that the plaintiff does not bear a good reputation, but they are unable to bring any witness from the county into the court to testify that his reputation is not good." Defendant's attorney, hearing this statement, rushed into the court room in his negligee attire and shouted: "I'll bet you $100 that we can." Plaintiff's attorney, who was occupying the witness stand, called out, "I'll take that!" After the court had sufficiently reprimanded the offending lawyers for their misconduct, and everything had quieted down again, the attorney who was addressing the jury turned to them and said: "Gentlemen, I take it that when a lawyer gets to running around the court room without any clothing, he's mighty badly scared."

**From Pathos to Pigs.**—In Chappell v. Ellis, 123 N. C. 259, 68 Am. St. Rep. 822, 31 S. E. 709, involving the doctrine of "mental anguish," the court, in distinguishing a case pressed upon its attention, makes the following startling comparison: "The anguish of a mother bending over the body of her child, every lock of whose sunny hair is entwined with a heartstring, and kissing the cold lips that are closed forever, cannot come within the range of comparison with any mental suffering caused by the loss of a pig."

Perhaps the better course is, to make the rich pay, and let the deserving and impoverished poor, the indigent widow and helpless orphan go free. Not only do not ask, but do not consent to receive fees from them. The Lord is their treasurer, and will pay their debts abundantly.—David Paul Brown in The Forum.




# Tennessee's Former Chief Justice

WILLIAM Dwight Beard, states the resolutions prepared by the committee of the Memphis bar, was born at Princeton, Kentucky, October 25, 1835, where he resided until fifteen years of age, when his parents removed to Lebanon, Tennessee. His father, the Reverend Richard Beard, was a minister of the Cumberland Presbyterian Church, at Lebanon, Tennessee, and at the head of the Theological Department of Cumberland University until his death.

HON WILLIAM DWIGHT BEARD

The son graduated in the Academic Department, and then, 1860, in the Law Department of Cumberland University at that time the most noted law school of the country, and *alma mater* of many great lawyers. He breathed its atmosphere of letters and of law, and his writings of after years, especially his written reports of cases, were admirable for clearness of exhibition of language, literary style, and force.

After his graduation he began practice at Lexington, and was married at Lexington on the 1st day of March, 1860, to Amelia Henderson who survives him.

The inspiration of Judge Beard's life and the mainspring of his noblest efforts were the many years of companionship with his bride of 1860.

In April of the same year he moved to Memphis, Tennessee, which became his home until his death, and began the practice there.

In May, 1862, he joined the Confederate Army, and was invited by General A. P. Stewart, who had been professor of mathematics at Cumberland University, to serve upon his staff, which he accepted, and served with General Stewart until the summer of 1863 He was then transferred to the Trans-Mississippi department, and was appointed by General Jo Shelby to the office of assistant adjutant general on his staff, and served in that capacity until 1864. He was severely wounded at the battle of Westport, and disabled from service until a short time before the surrender, in 1865, when he was paroled with his command.

It is related of him that while serving on General Stewart's staff his yearning to see his wife, then in St. Louis, was so great that he obtained leave of absence, donned citizen's clothes, and joined his wife in St. Louis. While dining with her at the hotel, he was recognized by Colonel Crittenden, of the Federal Army, afterwards governor of Missouri, and a friend of his wife's family, who, greatly to his credit, warned him by note to leave at once, as his presence was known and that he would be arrested and tried as a spy. He lost no time in leaving.

The war being ended, he returned to Memphis and resumed the practice of law.

He was in partnership with Major W. P. Wilson, the firm being Wilson & Beard, and subsequently with Judge J. W. Clapp, as Clapp & Beard, and upon Judge Clapp's retirement, his son, Lucas Clapp, was a partner, and the firm became Beard & Clapp.

On the death of Honorable W. C. Folkes in 1890, Judge Beard was appointed to fill the vacancy upon the bench of the supreme court of Tennessee and served to the end of that term to the next general election.

In 1891 he was appointed chancellor of the chancery court of Memphis, Tennessee, and served upon this bench until 1894, when he was elected a justice of the supreme court of Tennessee. In 1902 he was re-elected, and then was made chief justice of the supreme court of Tennessee.

In 1904 he was a delegate to the Universal Congress of Lawyers and Jurists, and served in this convention at St. Louis.

He served as chief justice of the Tennessee until his re-election to this bench in 1910, when he declined a re-election to the chief justiceship, and Judge Shields was elected to the place.

On the 7th of December, 1910, while the supreme court was holding its term at Nashville, Tennessee, after enjoying his breakfast and seeming to be in the best of health and spirits, he was stricken in his room and died suddenly,—supposedly from the bursting of a blood vessel of the head.

Judge Beard was one of the state's ablest jurists. He was fearless in the discharge of his duty, and his reputation was more than state wide.

He was a most lovable man and was personally very popular all over the state, particularly with the bar, to whom his never failing courtesy and kindly consideration had very much endeared him.

In the death of Penoyer L. Sherman on January 4th, Chicago lost one of its oldest lawyers.

Mr. Sherman was born in Onondaga county, New York. He attended the famous Pompey Academy, and graduated from Hamilton College in the class of '51.

Mr. Sherman selected Chicago for the practice of his profession, says the Inter-Ocean, and arrived there in 1853. The city then had 50,000 people, was built on stilts and "no Bottom" signs were to be seen in the middle of streets, but it was growing rapidly and was so full of prospective settlers that everyone greeted everyone else with the query: "Hello, stranger! Where do you hail from?" Mr. Sherman entered the law office of Collins & Williams. The next year he was admitted to the Illinois bar and began practice.

As a lawyer he was an excellent example of what may be called the old-fashioned general practitioner, in contrast with the present age of specialists. He was a student and reader always, and his briefs were models of classical English. In middle life he served many years as master in chancery of the superior court, a position for which his judicial habit of mind eminently fitted him, and he will be remembered by the older Chicago lawyers as one of the best masters in the legal history of the city. It is said of him that his findings were almost invariably confirmed by the court and almost without exception stood the test of appeal. Mr. Sherman had offices for a generation in the Ashland block,—both the original one and the one built after the fire—and many a Chicago lawyer has grateful memories of them, for Mr. Sherman was never too busy to thrash out a case with a young lawyer for the benefit of his [illegible] of the law.

# Oklahoma's Blind Lawyer Senator.

LONG before his first term of office as Senator had expired, the entire country had learned two interesting things about Thomas Pryor Gore, the blind man sent by Oklahoma to the United States Senate. One was the marvelous amount of well-digested and well-marshaled information acquired during that sightless life; the other was that he possessed a courage and integrity that made him a valuable servant of the nation, even more than of his party or his state.

Born forty years ago, among the hills that divide the Tombigbee and the Mississippi rivers, he grew up among the creeks and pines.

"At the age of eight years," writes Mr. James Creelman in a biographical sketch of Senator Gore, published in volume 21, No. 5, of Pearson's Magazine, "the boy's left eye was blinded by an accidental blow from a stick. Three years later he was employed as a page in the Mississippi senate, and boarded at the house of Senator J. Z. George, in Jackson. One day while playing with a crossbow, an arrow entered his right eye and destroyed his sight. As the wounded lad was carried home he stretched out his hands and moaned, 'Don't tell my mother. Please don't tell my mother.'"

"It would be harder to find a darker prospect in life than that which confronted the blind Mississippi boy. But in spite of his affliction young Gore managed to stand at the head of his class in school and at the age of seventeen years entered the Normal school.

"The great power which he displayed as a debater brought him invitations to address farmer's picnics and political gatherings. He had to be led about among the crowds, but he developed a remarkable power over his audiences. While the multitudes roared at the sight of a blind man tragically protesting against existing conditions or tossing oratorical rainbow dust in the air, he studied the tones of their voices, imagined the look in their faces, and planned how he might make them political prisoners of his tongue.

THOMAS PRYOR GORE.

"In September, 1891, he went to the Law School at Cumberland University, Tennessee, and was one of the leading six students in a class of forty-two. After a two years' effort to earn a living as a lawyer in the place of his birth, Gore decided to go to Texas. The fact that he was completely blind, and did not know a single person in that great state, could not daunt him. There he made political speeches, but found no chance to practise law.

"The voice of Oklahoma called loudly to the blind man in Texas. With statehood there would be two new United States Senators. There was welcome and enterprise in the spirit of Oklahoma, and the prairie dwellers might follow even a blind leader. He thrilled at the thought of it. In July, 1901, the blind lawyer and his brother went to the new land, driving 45 miles in a wagon to Fort Sill. Failing to draw a land claim, the Gores moved out 4 miles to Lawton,

an encampment on the open prairie. In 1902, Mr. Gore was elected to the territorial senate. On December 27th, 1900, he married Miss Nina Kay. Mrs. Gore took the place of his eyes. She devotedly accompanied him on his campaign tours.

"Gore fought hard for Oklahoma's admission to the Union. No man was more active in the agitation. But he would not go to the national capital.

"I won't go to Washington till I go with the right to speak and vote in the Senate," he said to his friends.

"The statehood bill was passed by Congress in 1906. It was a tragic thing to see a blind man harassed by poverty, fighting for the senatorship against his rich rivals, one a banker and the other a lawyer. His friends wanted him to abandon his ambition for a time, and run for Congress. 'It is the Senate or nothing,' he replied."

At last, on his thirty-seventh birthday, the legislature of Oklahoma fulfilled his life-long ambition by naming him as one of the Senators of the new state.

### Successful Montana Lawyer Dies.

Honorable William Wirt Dixon died at Los Angeles, California, some weeks since, in the seventy-third year of his age.

Judge Dixon had practised in Iowa, Tennessee, Arkansas, Nevada, and finally in Montana. He was a member of both constitutional conventions of the state of Montana, was president of the Montana State Bar Association from 1887 to 1891, and was a representative in the Fifty-second Congress from Montana. In his law practice he was prominently connected with the most notable litigation in the state; he represented the proponents of the will in the famous Davis Will Case. For many years he was chief counsel for the interests represented by the late Marcus Daly. He was a member of the American Bar Association, and at the time of his retirement from the active practice of the law was considered the best lawyer in the state.

### Kansas' Attorney General.

HON. JOHN S. DAWSON

Honorable John S. Dawson is the man whom Kansas has selected for her new Attorney General. He has received thorough training in the line of his new position, having served for eight years under preceding attorney generals of Kansas. As chief clerk, and later as special assistant, to Attorney General C. C. Coleman, of Kansas, Dawson resurrected, by hard digging, a great many defunct school districts which had died owing the state big sums of money. And in addition to bringing in those old boom-day loans he put an end to a practice that had arisen of selling off school lands far below their value. Promoted in 1907, after five years of hard work, to first assistant, he did much of the work in connection with the famous brewery ouster suits by which Kansas got rid of brewery control of law-breaking properties throughout the state. After some months of service as private secretary to Governor Stubbs, he was appointed attorney to the state board of railroad commissioners, a new position that has developed a special line of work. He will continue to hold that position until next spring, when he takes up his work as Attorney General.

It is twenty-six years since the Attorney General elect of Kansas left Scotland, his birthplace, and the Robert Gordon's College, at Aberdeen. On coming to Kansas he was for some time a student at Salina Normal University. After a mixture of law reading, school teaching, and newspaper work, he was admitted to the bar in 1898. Like others of the younger men in Kansas politics, he received his law degree at Washburn Law School, at the state capitol.

"The state officers are for the serving of the people," is generally believed to be one of Dawson's moving maxims. It is well illustrated in his appearance as an attorney of the Kansas Board of Railroad Commissioners before the Interstate Commerce Commission, in the present hearing on shipping rates. It is along this line that some of Mr. Dawson's best work may be expected in the future.

Jose M. Figueras-Chiques, a justice of the supreme court at San Juan, Porto Rico, died recently in that place. He was born in San Juan, January 30, 1851. He was educated in the University of Santiago de Galicia, Spain, and became a licentiate in civil and canonical law at Madrid in 1879. From then until 1892 he practised law in San Juan. From 1892 to 1895 he was connected with the Audencia territory, Santiago de Cuba, first as secretary and later as assistant prosecuting attorney, and in 1895 he became a judge of the First Instance at Mayaguez. He was a judge of the Audencia de lo Criminal at Mayaguez when he was appointed prosecuting attorney of the Audencia Mayaguez by Major General James H. Wilson. He then received a military appointment to the supreme court of Porto Rico, retaining the position under the provisional government until 1900, continuing under presidential appointment.

Cephas Brainerd, a New York attorney who was an authority on international law, died recently at his home in New York city. He had long been a prominent member of the New York bar, and held the chairmanship of the Bar Association committee on amendment of the law. For years he had been interested in reform movements and was especially active in prison reform work.

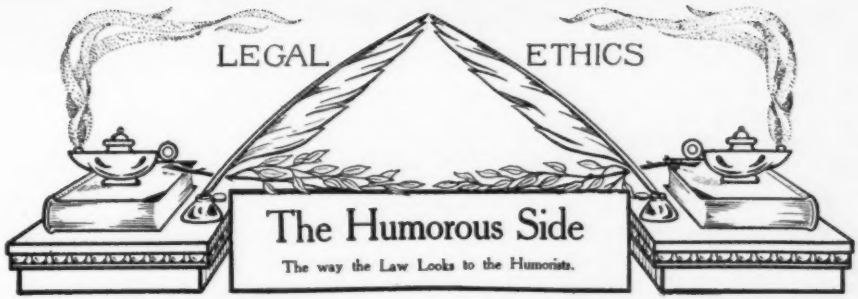
Martin W. Littleton, just elected to Congress, has quit the New York law firm of O'Brien, Boardman, Platt, & Littleton. The firm is counsel for the United States Express Company and other carriers, as well as for other corporations.

"I feel the responsibilities I am to assume forbid my staying in the firm, in justice to the obligations of the firm to its clients. So I am getting out now instead of waiting till I go to Congress next March." Mr. Littleton is to urge the passage of a parcels post act in Congress. The Express companies have fought such an act.

We hear much of "special interest" legislators in these days, observes the St. Louis Republic, and it must in candor be admitted that specimens are all too numerous. It is inspiriting, therefore, to come upon such an item as that which chronicled the withdrawal of Martin W. Littleton, Congressman elect, from his New York law firm, in order that he should be free from all "entangling alliances" in his work as a legislator.

It is obvious that this plan cannot be carried out in every case. The business man, elected to Congress, cannot sell out his business; the labor unionist cannot leave his union. The value of Mr. Littleton's act is not as a precedent for other men to follow; it is rather as an indication of the spirit which a man of exceptional personal force and power of utterance brings to the performance of a legislator's task at a time in the nation's history when there is a special need of clean hands and straight thinking in legislative halls.

Missourians who know their state's history will think of the day when Thomas H. Benton called together in St. Louis his client in the land-grant litigation, which was the most profitable branch of practice in his time, and told them that he was going to Washington as Senator, that as such he would have to pass on matters affecting their interests, and that he could therefore represent them no longer.




**Wanted Particulars.**—"Would you defend a crook, if you knew positively that he was guilty of the crime with which he was charged?"

"Well, it would depend," replied the lawyer. "What charge do you expect them to lodge against you?"—Record-Herald.

**Where the Credit Lay.**—Litigant—"Your fee is outrageous. Why, it's more than three fourths of what I recovered."

Lawyer—"I furnished the skill and the legal learning for your case."

Litigant—"But I furnished the case."

Lawyer—"Oh, anybody can fall down a coal hole."—Boston Transcript.

**Won Out.**—She—The lawyers got most of the estate.

He—Didn't the widow get anything?

She—Oh! yes, she got one of the lawyers.—Buffalo News.

**In London.**—The suffragette lady had flung the fish at the premier and winged an innocent bobby 30 feet away.

They brought her before the Bow street magistrate, who regarded her with a frosty eye.

"The evidence bears out the court's impression that you were fully prepared to commit this assault," said the judge.

"I had two fishes," replied the lady, "and one smelt."

"Is that a joke?" snapped the magistrate.

"I-I got it from Tit-Bits," stammered the lady.

"Thirty days for the assault and six months for the tit-bit!" roared the judge.

And they led the unhappy fish distributor to a dark and dismal cell.—Cleveland Plain Dealer.

**It's a Ripper.**—Here is another of those traditional English jokes, of the "good story" class, reverently scissored from the London Express:

Mr. Douglas Grand, who was the principal witness for the Crown at the remount trial at Ennis, tells a good story regarding the examination of one of the witnesses.

"Did you sell Major Studdert a horse?" asked the counsel.

"No, sorr," replied the witness.

"Did your father sell Major Studdert a horse?"

"No, sorr."

"Did any member of your family sell Major Studdert anything?"

"Yes, sorr, I did," replied the witness.

"And what did you sell Major Studdert?"

"I sold him a mare," replied the witness, to the chagrin of counsel and the delight of the court.

**Should Be Run In.**—When charged with being drunk and disorderly, and asked what he had to say for himself, the prisoner gazed pensively at the magistrate, smoothed down a remnant of gray hair, and said:

"Your Honor, man's inhumanity to man makes countless thousands mourn. I'm not as debased as Swift, as profligate as Byron, as dissipated as Poe, as debauched a—"

"That will do!" thundered the magistrate. "Ten days! And, officer, take a list of those names and run 'em in. They're as bad a lot as he is!"—London Mail.

**Plucking Victory from the Jaws of Defeat**—An eminent lawyer was once cross-examining a very clever woman, mother of the plaintiff in a breach of promise ac-

tion, and was completely worsted in the encounter of wits. At the close, however, he turned to the jury and exclaimed, "You saw, gentlemen, that even I was but a child in her hands. What must my client have been?" By this adroit stroke of advocacy he turned his failure into a success.—London Mail.

**An Extenuating Circumstance.**—"I pleads guilty ter stealin' dem melons, jedge," said the prisoner; "but I wants de mercy er de court." "On what grounds?" asked the judge. "On dese grounds," replied the prisoner. "I stole de melons, but de sheriff didn't give me a chance ter eat 'em!"—Atlanta Constitution.

**A Charitable Bequest.**—A sad and seedy individual gained admission to the offices of one of the city's best known legal firms, and at last somehow penetrated to the sanctum of the senior partner.

"Well," asked the lawyer, "what do you want?"

The visitor was nothing, if not frank.

"Half a dollar," he said boldly.

The man's unusual manner caught the lawyer's curiosity.

"There you are," he said, handing out the money. "And now I should like to have you tell me how you came to fall so low in the world."

The visitor sighed. "All my youth," he explained, "I had counted on inheriting something from my uncle, but when he died he left all he had to an orphan asylum."

"A philanthropist," commented the lawyer. "What did his estate consist of?"

"Ten children," said the visitor—and vanished.—New York Weekly.

**Useless Knowledge.**—A colored man was brought before a police judge, charged with stealing chickens. He pleaded guilty and received sentence, when the judge asked how it was he managed to lift those chickens right under the window of the owner's house when there was a dog in the yard.

"Hit wouldn't be no use, judge," said the man, to try to 'splain dis thing to yo' all. Ef you was to try it you like as not would get yer hide full of shot an' get no chickens, nuther. Ef yo' want to engage in any rascality, judge, yo' better stick to de bench, whar' yo' am familiar."—The Oklahoma Law Journal.

**Taking No Chances.**—"I have a remarkable history," began the lady who looked like a possible client.

"To tell or to sell?" inquired the lawyer cautiously.—Kansas City Journal.

**A Slip of the Tongue.**—A lawyer was questioning a woman who was on the witness stand, and she was going to say, "Indeed I do," with marked emphasis, in reply to one of the lawyer's questions. Her tongue tripped her up and even the sedate judge grinned when she said in a high-pitched, screeching voice:

"Indude I dee, sir!"

Crimsoning with confusion she said:

"You know very well that what I meant to say was Indo I deed, sir—er—er—you know what I mean."

"Indeed I do," said the lawyer.

"Yes, that's it, sir—indee I dude—er—I don't know what's the matter with my fool tongue to-day."

**He Was Scared.**—There used to be a sheriff in a Green Mountain county of Vermont who, for forty years, had driven his prisoners—murderers, moonshiners, thieves—through the woods in his buggy to the county jail, and yet who had never carried a revolver nor used a pair of handcuffs in his life. He had a strong hand, a brave heart, and a stutter.

"Weren't you ever afraid?" someone asked him one day.

"W-well, I'llow once I w-wuz t-tol'-rable well skeert," he admitted slowly. "I h-heard S-Si P-Perkins, the b-barber, wuz g-gone d-daft an' wuz c-carvin' p-people up, an' I c-calc'lated it wuz my official d-dooty to g-go an' arrest him. So I w-went d-down to S-Si's shop, an' w-went in, an' S-Si c-come at me w-with a r-razor in each h-hand. An' then I 'llow I wuz t-tol'rable well skeert."

"What did you do?"

"W-w-well," said the old sheriff, spitting thoughtfully into the sand box beside the stove, "I wuz s-so s-skeert that I t-took 'em a-a-away from him."—Everybody's.